

STATE LAW LIBRARY

DEC 14 1979

OF MONTANA

REVISED CODES OF MONTANA

VOLUME 4

Part 1

1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
SECOND REPLACEMENT VOLUME 4 (PART 1)
OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING SECOND REPLACEMENT
VOLUME 4 (PART 1) THROUGH VOLUME 557 PACIFIC
REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



REVISED CODES OF MONTANA

VOLUME 4

Part 1

1977 Cumulative Supplement

Copyright © 1971, 1973, 1974, 1976 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
SECOND REVISION (PART 1)

Copyright © 1977 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

AND

ANNOTATIONS SUPPLEMENTING SECOND REVISION
VOLUME 4 (PART 1) THROUGH VOLUME 57 PACIFIC
REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



NEW LAWS IN VOLUME 4 (Part 1)

For Index See Supplement to Replacement Volume 9

ENACTED IN 1971

Ambulance service, 69-3604 to 69-3613.
Blood transfusion, immunity from liability for, 69-2203 to 69-2205.
Building and mobile home construction standards, 69-2122 to 69-2124.
Consent by minors to medical and psychiatric counseling, 69-6106, 69-6107.
Environmental Policy Act, 69-6501 to 69-6517.
Explosives and destructive devices, possession in public place, 69-1931, 69-1932.
Occupational health, 69-4206 to 69-4209, 69-4211 to 69-4221.
Optometrists, continuing education, 66-1318.
Passenger tramways, 69-6601, 69-6602, 69-6605 to 69-6617.
Psychologists, licensing and regulation, 66-3201 to 66-3203, 66-3205 to 66-3209, 66-3211 to 66-3214, 82A-1602.27.
Public employees' sick leave and holidays, 59-1008, 59-1009.
Refuse disposal districts, 69-6012, 69-6013.
Water pollution, 69-4807.1, 69-4808.2, 69-4809.1, 69-4820 to 69-4827.

ENACTED IN 1973

Boat safety education program, 69-3516.1.
Collective bargaining for public employees, 59-1601 to 59-1616.
Constitutional officer unable to perform, finding, 59-609.
Dead bodies, disinterment permits, 69-4428.1.
Group insurance for state employees, 59-1501 to 59-1507.
Motor vehicle wrecking facilities, 69-6801 to 69-6810.
Newborn infants, metabolic testing, 69-6710 to 69-6713.
Nursing, use of term in advertising by health care facilities, 69-5203.1.
Personnel employed by state, classification and compensation, 59-903 to 59-914.
Pregnant women, serological testing, 69-6701 to 69-6709.
Public employees' leaves of absence,
 Definition of terms, 59-1007.1.
 Jury duty or service as witness, 59-1010.
Public employees' retirement system, 68-1501 to 68-2514.
Salaries for elective and judicial officers, commission to recommend, 59-1401 to 59-1404.
Subdivision sanitary requirements, administration and procedures, 69-5006 to 69-5009.
Unit ownership projects, protection of purchasers, 67-2303.1 to 67-2303.6, 67-2343, 67-2344.
Water pollution control administration, 69-4808.3, 69-4809.2, 69-4820.1, 69-4824.1.

ENACTED IN 1974

Card games, bingo, raffles, and sports pools, 62-701 to 62-736.
Discrimination in employment, 64-304 to 64-312.
Horse racing, disposition of unclaimed winning ticket money, 62-515.
Oil and gas,
 Inventory and reclamation of abandoned wells and seismic operations, 60-149.
 Notice required before well abandonment, pipe burial option, 60-901.
Professions and occupations,
 Acupuncture Practice Act, 66-3401 to 66-3417.
 Barbers and barbershops, definitions, licensing, 66-401.1, 66-403.1.
 Chiropractors, definitions, 66-501.1.
 Cosmetological inspection fees, 66-813.1.
 Dentistry, definitions, 66-901.1.
 Electrical inspections and tags, 66-2805.1.
 Medical and health care practitioners' duty to report wounds, immunity from liability, 66-1050, 66-1051.

NEW LAWS IN VOLUME 4 (Part 1) (Continued)

Professions and occupations (Continued)

- Nurse-midwife licensing, 66-1246.
- Optometry, definitions, 66-1301.1.
- Osteopathy, definitions, 66-1401.1.
- Pharmacists, departmental employee qualifications, 66-1521.1.
- Plumbers, definitions, 66-2401.1.
- Private investigators and patrol operators, regulation, bond and licensing, 66-3301 to 66-3331.
- Public accountants,
 - Definitions, 66-1807.1.
 - Registration of professional corporations composed of CPA's or PA's, 66-1829.1, 66-1831.1.
- Title abstracters, definitions, 66-2101.1.
- Veterinarians, definitions, 66-2201.1.
- Water well contractors, definitions, exceptions, 66-2602.1, 66-2602.2.

Public employees' retirement systems,

- Deferred compensation plan, 68-2701 to 68-2709.
- Sheriffs' retirement system, 68-2601 to 68-2629.

Public health and safety,

- Abortion counselors and counseling services, 69-6901 to 69-6908.
- Air pollution, powers of department of health and environmental sciences, 69-3909.1.
- Emergency medical services program, 69-7001, 69-7002.
- Minor's medical consent, "health professional" defined, 69-6105.1.
- Occupational health, powers of department of health and environmental sciences, 69-4211.1.
- Sanitarians, regulation and licensing, 69-3410 to 69-3423.
- Sterilization by consent, definitions, refusal of medical personnel to participate, 69-5222 to 69-5224.

ENACTED IN 1975

- Air pollution violations, civil penalties, 69-3921.1.
- Consumer Product Safety Act, 69-7101 to 69-7113.
- Contributory negligence, when bars recovery, 68-607.1.
- County attorney as legal adviser to local health boards, 69-4508.1.
- Crane, hoist, and crane inspector licenses, requirements and grandfather clause, 69-1601.1, 69-1608, 69-1609.
- Discriminatory practices,
 - Commission powers, rules, 64-313 to 64-315.
 - Exemptions, 64-306.1.
- Electrology regulation, 66-3601 to 66-3608.
- Emergency medical technicians, 69-7003 to 69-7010.
- Engineers and land surveyors, registration, examinations, public works, exemptions, temporary permits, and interpretation of practice, 66-2357, 66-2359, 66-2360, 66-2363, 66-2365, 66-2367 to 66-2369.
- Environmental policy, state agency fees authorized when impact statement required, 69-6518.
- Heating, Ventilation, and Air Conditioning Act, 66-3501 to 66-3515.
- Junked motor vehicles or parts, placement between stream banks prohibited, penalty, 69-6811, 69-6812.
- Landscape Architect Registration and Licensing Act, 66-3801 to 66-3813.
- Licensure of criminal offenders, 66-4001 to 66-4005.
- Medical practitioners, nonliability for peer review, 66-1052.
- Open-space land, easements allowed, conservation easements, 62-610 to 62-616, 62-618.
- Public officers and employees,
 - Collective bargaining by school districts, 59-1617.
 - Mandatory leave of absence for employees holding public office, 59-1011, 59-1012.
- Radiologic technologists, 66-3701 to 66-3712.
- Speech pathologists and audiologists, 66-3901 to 66-3913.
- State and local employees, agencies, and programs, 64-316 to 64-330.
- Uniform Parentage Act, 61-301 to 61-327.
- Veterinary technicians, 66-2213 to 66-2215.
- Water treatment works, rates and charges, determination of costs, 69-4808.4, 69-4808.5.

NEW LAWS IN VOLUME 4 (Part 1) (Continued)

ENACTED IN 1977

Architecture, public policy on, 66-101.1.
Asbestos insulation, 69-7401 to 69-7407.
Bingo and raffles authorized, 62-715.1.
Building regulations, 69-2125.
Child custody jurisdiction, 61-401 to 61-425.
Chiropractors, revocation of license, 66-510.1 to 66-510.3.
Collective bargaining for public employees, training of fact finders and arbitrators, 59-1614.1.
Cosmetologist, licensing reciprocity, 66-808.1.
Death, definition, 69-7201.
Defendants, multiple, joint and severally liable, contribution, 58-607.2.
Drug selection, 66-1528 to 66-1536.
Game wardens retirement system, 68-1402.1, 68-1420.1.
Geophysical exploration, 69-3305.1.
Home health agencies, 69-7301 to 69-7310.
Joint tenancies, distribution, 67-308.1.
Medical practitioners, reports on incompetency, 66-1053 to 66-1057.
Optometrist, 66-1301.2, 66-1305.1.
Parent and child, termination of parental rights, 61-328 to 61-334.
Petroleum products, 60-234 to 60-245.
Pharmacists, 66-1507.1.
Public Employees Retirement Act, 68-2502.1, 68-2513.1.
Public officers and employees, code of ethics, 59-1701 to 59-1711.
Public records, retention and destruction, 59-530.1 to 59-530.4.
Public water supply, 69-4905.1, 69-4905.2.
Radiation control, 69-5817 to 69-5821.
Radiologic technicians, 66-3701.1, 66-3709.1.
Real estate brokers and salesmen, 66-1927.1.
Refuse disposal areas, 66-4001.1.
Sheriffs' retirement system, 68-2620.1, 68-2622.1.
Solid waste management, 69-4011 to 69-4020.
Sports pools authorized, 62-727.1.
State employees' compensation plan, 59-915 to 59-922.
Subdivision sanitary requirements, 69-5010.
Tramways, 69-6608.1.

AMENDMENTS IN VOLUME 4 (Part 1)

Acupuncture, 66-3411.
Adoption of children, 61-203, 61-205, 61-208, 61-209, 61-211, 61-213, 61-214.
Age of majority, 64-101.
Air pollution, 69-3906 to 69-3909, 69-3911, 69-3912, 69-3914 to 69-3919, 69-3921, 69-3921.1.
Air pollution control equipment, classification for tax purposes, 69-3923.
Ambulance service, 69-3605, 69-3608 to 69-3610.
Architects, 66-102, 66-103, 66-106 to 66-114.
Barbers and barbershops, 66-401, 66-403, 66-405, 66-407 to 66-412.
Blood and blood products, medical use not sale, 69-2203.
Board and department of health and environmental sciences, 69-4102, 69-4104, 69-4106, 69-4110, 69-4110.1, 69-4111, 69-4112, 69-4118.
Boiler inspection and engineers, 69-1501 to 69-1505, 69-1507 to 69-1517.
Brands and tattoo marks, 67-205.
Building and mobile home construction standards, 69-2105, 69-2107, 69-2109 to 69-2114, 69-2116, 69-2117, 69-2119, 69-2122 to 69-2124.
Cadavers, 69-5102, 69-5104.
Card Games Act, 62-706 to 62-710, 62-713, 62-719, 62-720, 62-724, 62-725, 62-729 to 62-731, 62-735.
Cesspools, septic tanks and privies, 69-5401 to 69-5405, 69-5407, 69-5408.
Chiropractors, 66-503 to 66-507, 66-510 to 66-513.
Constitutional officers, mode of election, 59-203.
Consumer product safety, 69-7102, 69-7103, 69-7105, 69-7107, 69-7108, 69-7110.
Cosmetologists, 66-801 to 66-803, 66-805 to 66-809, 66-811 to 66-813.1, 66-815, 66-816, 66-818.
County parks, 62-102.
Dentists, 66-904 to 66-906, 66-908 to 66-911, 66-913, 66-919 to 66-923.

AMENDMENTS IN VOLUME 4 (Part 1) (Continued)

Discriminatory practices, 64-301, 64-305 to 64-312, 64-317 to 64-324.
Electricians and electrical safety, 66-2802, 66-2803, 66-2805 to 66-2812, 66-2814, 66-2815, 66-2817, 66-2819.
Electrology, 66-3607, 66-3608.
Emergency medical services program, duties of department, 69-7002.
Engineers and land surveyors, 66-2350 to 66-2352, 66-2356, 66-2358, 66-2361, 66-2362.
Environmental quality council, composition and term of office, 69-6508 to 69-6510.
Explosives, 69-1923, 69-1925, 69-1929.
Fire extinguisher requirements, 69-1807.
Fire safety, 69-1802, 69-1808.
Fireworks regulation, 69-2701, 69-2702.
Geophysical exploration, 69-3303 to 69-3305, 69-3308.
Gifts to minors, 67-1801, 67-1804, 67-1807.
Health laws or rules violation, penalty, 69-5701.
Hearing aid dispensers, 66-3003, 66-3005 to 66-3007, 66-3009, 66-3011, 66-3014 to 66-3017, 66-3019, 66-3020, 66-3022.
Heating, Air Conditioning and Ventilation Act, 66-3505.
Hoisting engines and operators, 69-1601, 69-1601.1, 69-1602, 69-1603, 69-1606, 69-1607.
Horse racing, 62-502 to 62-511.
Hospital construction, 69-5301 to 69-5308, 69-5310, 69-5311.
Hospitals and health care facilities, 69-5201, 69-5203 to 69-5205, 69-5207, 69-5208, 69-5210, 69-5212, 69-5213, 69-5217, 69-5219, 69-5220.
Joint tenancies created by direct conveyance, 67-1602.1.
Landscape architect, 66-3809.
Libelous and defamatory matter, correction by publisher or broadcaster, 64-207.1.
Local boards of health, 69-4502 to 69-4504, 69-4508 to 69-4511, 69-4519.
Massage therapist, 66-2902, 66-2904 to 66-2910, 66-2914.
Medical practitioners, 66-1012, 66-1015, 66-1017 to 66-1021, 66-1023, 66-1025 to 66-1034, 66-1036 to 66-1038, 66-1041 to 66-1043, 66-1045, 66-1048, 66-1052.
Minor's medical consent, 69-6101 to 69-6106.
Morticians and funeral directors, 66-2701, 66-2703, 66-2706 to 66-2709, 66-2711, 66-2715.
Motorboats and vessels, 69-3502 to 69-3508.1, 69-3510, 69-3512 to 69-3514, 69-3516 to 69-3518.
Motor vehicle wrecking facilities, 69-6801 to 69-6803, 69-6805 to 69-6808, 69-6810 to 69-6812.
Nursing, 66-1222, 66-1223, 66-1225 to 66-1228, 66-1231, 66-1232, 66-1234, 66-1236 to 66-1243.
Nursing home administrators, 66-3101, 66-3103 to 66-3107, 66-3109 to 66-3112.
Occupational health, 69-4208, 69-4209, 69-4211, 69-4213, 69-4215, 69-4216, 69-4218, 69-4219, 69-4221.
Oil and gas,
 Conservation, 60-126, 60-127, 60-127.1, 60-128 to 60-131, 60-131.1 to 60-131.6, 60-131.8 to 60-131.12, 60-132 to 60-136, 60-140 to 60-145, 60-148.
 Interstate conservation compact, expenses of representative, 60-606.
 Underground gas storage, 60-801 to 60-805.
Open-space land, 62-601 to 62-605, 62-608.
Optometrists, 66-1301 to 66-1305, 66-1307, 66-1308, 66-1311 to 66-1314, 66-1318.
Osteopaths, 66-1402 to 66-1406, 66-1410, 66-1411, 66-1413.
Parent and child, 61-104, 61-105, 61-109, 61-112.1, 61-113, 61-117, 61-122.
Partnership, 63-107, 63-402, 63-504, 63-702, 63-803, 63-901, 63-905.
Pawnbrokers and junk dealers, 66-1601, 66-1602, 66-1607.
Personal relations protected, 64-209.
Pharmacists, 66-1501, 66-1502, 66-1504 to 66-1508, 66-1511, 66-1512, 66-1516, 66-1521 to 66-1523, 66-1525, 66-1527.
Physical therapists, 66-2501 to 66-2503, 66-2505 to 66-2510, 66-2514.
Plumbers, 66-2401 to 66-2407, 66-2409, 66-2411, 66-2414 to 66-2417, 66-2419, 66-2422, 66-2426, 66-2427.
Podiatrists, 66-601 to 66-608.
Pregnant women, serological testing, 69-6701, 69-6704.
Private investigators, 66-3319.
Psychologists, 66-3202, 66-3203, 66-3205, 66-3206, 66-3208, 66-3209, 66-3211.
Public accountants, 66-1815 to 66-1821, 66-1825, 66-1826, 66-1829 to 66-1833, 66-1835 to 66-1838.
Public buildings, sanitary inspection, 69-4118.

AMENDMENTS IN VOLUME 4 (Part 1) (Continued)

Public Employees' Retirement Act,

Administration, 68-2501, 68-2504 to 68-2506, 68-2510, 68-2511, 68-2513.

Board, 68-1802, 68-1803.

Death benefits, 68-2304, 68-2305.

Deferred compensation plan, 68-2701, 68-2702, 68-2708.

Definitions, 68-1503.

Disability retirement, 68-2101, 68-2103, 68-2104.

Employer contributions, 68-1901, 68-1902, 68-1904 to 68-1906.

Game wardens, 68-1401, 68-1402, 68-1405 to 68-1410, 68-1413 to 68-1415, 68-1417.

Membership, 68-1602, 68-1604 to 68-1608.

Reduction or cancellation of allowance, 68-2201 to 68-2204.

Service retirement, 68-2001 to 68-2004.

Sheriffs' retirement system, 68-2602, 68-2604, 68-2607, 68-2610, 68-2614, 68-2616, 68-2618 to 68-2622, 68-2626 to 68-2628.

Public officers and employees,

Classification and compensation, 59-903, 59-904, 59-907 to 59-912.

Collective bargaining, 59-1602, 59-1603, 59-1605, 59-1606, 59-1609, 59-1610, 59-1614.

Contracts of public agencies, prohibited interest in, 59-501.

Destruction of old records, 59-514, 59-515.

Expenses of persons in state service, 59-538, 59-539.

Federal social security, 59-1102, 59-1102.1, 59-1104 to 59-1106, 59-1108 to 59-1112.

Fiscal year and official reports, 59-701, 59-701.1, 59-701.2.

Group insurance for state employees, definitions, 59-1501.

Mileage allowances, 59-801.

Montana salary commission, 59-1401, 59-1402, 59-1404.

Oath of office, 59-413.

Qualifications for office, 59-301.

Recall, 59-610 to 59-630.

Relative's appointment to office unlawful, 59-519.

Sick leave, 59-1008.

Vacancies in office, filling, 59-605.

Vacation leave, 59-1001 to 59-1003, 59-1005, 59-1010.

Public water supply, 69-4902 to 69-4904, 69-4907.

Radiation control, 69-5803, 69-5804, 69-5806 to 69-5810, 69-5812 to 69-5814, 69-5816.

Radiologic technicians, 66-3701, 66-3702, 66-3705 to 66-3709.

Real estate brokers and salesmen, 66-1924 to 66-1927, 66-1929 to 66-1937, 66-1938.1, 66-1940, 66-1943 to 66-1946.

Real property, powers of and grants by married persons, 67-903, 67-904, 67-1603.

Refuse disposal areas, 69-4001 to 69-4010.

Refuse disposal districts, 69-6002, 69-6004 to 69-6007, 69-6010, 69-6013.

Sanitarians, 69-3414, 69-3416.

Scaffolds, 69-1401.

Servitudes, 67-601, 67-602.

Speech pathologists, 66-3905, 66-3906.

State parks, 62-301, 62-304 to 62-307, 62-310, 62-311, 62-314.

Sterilization by consent, 69-6403 to 69-6406.

Subdivided lands, 67-2101 to 67-2103, 67-2105 to 67-2108, 67-2110, 67-2112 to 67-2114, 67-2116 to 67-2118, 67-2121 to 67-2129, 67-2135.

Subdivision sanitary requirements, 69-5001 to 69-5003, 69-5005.

Surveys and co-ordinates, 67-2003, 67-2011, 67-2015.

Swimming pools, 69-5502 to 69-5505, 69-5510, 69-5511.

Title abstracters, 66-2103 to 66-2105, 66-2108, 66-2110, 66-2111, 66-2113 to 66-2115.

Tourist campgrounds and trailer courts, 69-5601 to 69-5606, 69-5607.

Tramways, 69-6601, 69-6602, 69-6605 to 69-6615.

Unclaimed property, disposition, 67-2211 to 67-2226.

Uniform Parentage Act, 61-309, 61-323.

Unit ownership of real property, 67-2302, 67-2303, 67-2304, 67-2305, 67-2314, 67-2317 to 67-2319, 67-2322, 67-2323, 67-2340, 67-2342.

Venerable disease control, 69-4602, 69-4603, 69-4610, 69-4616, 69-4617.

Veterinarians, 66-2202 to 66-2204, 66-2207 to 66-2212, 66-2214.

Vital statistics, 69-4401 to 69-4407, 69-4409 to 69-4414, 69-4416 to 69-4418, 69-4420, 69-4421, 69-4423, 69-4425, 69-4428.1, 69-4431 to 69-4435.

Water pollution control, 69-4801, 69-4802, 69-4804 to 69-4806, 69-4807.1, 69-4808.1, 69-4808.2, 69-4809.1, 69-4809.2, 69-4812, 69-4814, 69-4820 to 69-4826.

Water treatment plants and distribution systems, 69-5902 to 69-5911.

Water well contractors, 66-2602, 66-2602.1, 66-2602.2, 66-2604 to 66-2610.

MONTANA REVISED CODES

TITLE 57—NUISANCES

CHAPTER 1—NUISANCES PUBLIC AND PRIVATE—REMEDIES

57-101. (8642) Nuisance defined.

Sufficiency of Complaint Stating Course of Action for Nuisance

Where negligence is an element of nuisance, the fact that plaintiff pleads both

negligence and nuisance as independent causes of action does not make pleading a sham. *Ekwortzel v. Parker*, 156 M 477, 482 P 2d 559.

57-102. (8643) Public nuisance.

Dangerous Dog

Where three-year-old child was killed by Siberian Husky dog that was chained on unfenced private property which was not

within boundaries of any city or town, dog could not be declared public nuisance and "abated." State ex rel. *Fields v. District Court*, — M —, 541 P 2d 66.

57-111. (8652) Public nuisance—how abated.

Exhaustion of Administrative Remedies

Where defendant owned motel which had outdoor sign with flashing lights less than 660 feet from highway, contrary to law, county attorney could not enjoin and

abate sign as public nuisance until he had exhausted his administrative remedies pursuant to section 32-4722. State ex rel. *Jones v. Giles*, — M —, 541 P 2d 355.

TITLE 58—OBLIGATIONS

Chapter

6. Obligations imposed by law, 58-607.1, 58-607.2.

CHAPTER 2—JOINT AND SEVERAL, CONDITIONAL AND ALTERNATE OBLIGATIONS

58-206. (7402) Condition precedent.

"Condition Precedent"

Where plaintiff leased a truck to defendant and later brought suit for rent due and unpaid, plaintiff's performance of his part of the lease agreement was not

a condition precedent within meaning of this section, and need not be alleged in the complaint. *McEwen v. Big Sky of Montana, Inc.*, — M —, 545 P 2d 665.

CHAPTER 4—EXTINCTION OF OBLIGATIONS BY PERFORMANCE, OFFER OF PERFORMANCE AND PREVENTION OF PERFORMANCE

58-423. (7446) Extinction of pecuniary obligation.

Substantial Compliance

Judgment debtor's deposit in a savings account in judgment creditor's name of amount of trial court's recomputed award extinguished its obligation so that interest

did not continue to run even though deposit did not include interest already accrued and original, higher award was reinstated on appeal. *Resner v. Northern Pacific Ry.*, — M —, 505 P 2d 86.

58-424. (7447) Objections to mode of offer.

Acts Constituting Waiver

Party who was obligated to sell shares of stock under repurchase agreement waived objections to tender by failing to object to terms of tender, conduct evidenc-

ing his willingness to sell and requesting a change in payment terms. *State ex rel. Howeth v. D. A. Davidson & Co.*, — M —, 517 P 2d 722.

CHAPTER 6—OBLIGATIONS IMPOSED BY LAW

Section

58-607.1. Contributory negligence—when bars recovery.

58-607.2. Multiple defendants jointly and severally liable—right of contribution.

58-607. (7579) Responsibility for willful acts, negligence, etc.

Purpose of Statute

The purpose of this statute is twofold: (1) to fix primary responsibility and liability on the tort-feasor whose conduct occasioned the loss or injury and (2) to make the victim whole. *Haynes v. County of Missoula*, 163 M 270, 517 P 2d 370, 377, 69 ALR 3d 1008.

Release Void as Contrary to Public Policy

This section together with sections 13-801 (2) and 49-105 were broad enough to render illegal any exculpatory clause or release relieving a potential tort-feasor from all liability for future negligent con-

duct where such clause or release was contrary to public policy or against the public interest; release relieving county fair board from any liability to livestock while on fairgrounds was illegal and unenforceable as contrary to public policy and against public interest and precluded county from disclaiming liability in negligence action for exhibitor's horses killed in barn fire on county fairgrounds; suppression of release in exhibitor's negligence action was not error or ground for new trial. *Haynes v. County of Missoula*, 163 M 270, 517 P 2d 370, 69 ALR 3d 1008.

Res Ipsa Loquitur

Four elements are necessary in *res ipsa loquitur* cases: (1) defendant's exclusive knowledge of the cause of the accident; (2) lack of fault by the injured person; (3) causation of injury by the negligence of the defendant; and (4) the defendant's exclusive control at the time of the injury of the instrument which caused the injury. *Hash v. Montana Power Co.*, — M —, 524 P 2d 1092.

The doctrine of *res ipsa loquitur* does not apply to a fire that started at an electrical meter box attached to plaintiff's building, where the exact cause of the fire had not been determined, and the plaintiff was in control of the circuit breakers and electrical devices within the building,

and the meter box was vulnerable to the entry of moisture, dust, and foreign objects, and there was a dearth of any evidence that the fire would not have happened without negligence on the part of the defendant. *Hash v. Montana Power Co.*, — M —, 524 P 2d 1092.

Sudden Emergency

The court properly instructed the jury in the doctrine of sudden emergency, where a driver who was legally passing a logging truck which suddenly turned left in front of her, was too close to stop, and so chose to dodge between the truck and another vehicle in order to avoid a collision. *Beebe v. Johnson*, — M —, 526 P 2d 128.

58-607.1. Contributory negligence—when bars recovery. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, if such negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

History: En. 58-607.1 by Sec. 1, Ch. 60, L. 1975.

Title of Act

An act relating to contributory negligence.

Prospective Effect Only

This statute constitutes a change in the

substantive law, and, therefore, since there is no express declaration that the legislature intended it to be of retroactive effect, section 12-201 prohibits its application to a claim arising before its effective date. *Dunham v. Southside Nat. Bank of Missoula*, — M —, 548 P 2d 1383.

58-607.2. Multiple defendants jointly and severally liable—right of contribution. (1) Whenever the comparative negligence of the parties in any action is an issue and recovery is allowed against more than one party, each such party is jointly and severally liable for the amount awarded to the claimant but has the right of contribution from any other party against whom recovery is allowed. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed.

(2) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party.

History: En. 58-607.2 by Sec. 1, Ch. 433, L. 1977.

Title of Act

An act to provide that multiple defendants in negligence actions contribute to payment of the judgment in proportion to their comparative negligence and to specify the applicability of that provision.

Applicability of Act

Section 2 of Ch. 433, Laws 1977 read "This act applies to any cause of action which accrued after July 1, 1975, but which has not yet been determined by trial or judgment in the district court as of July 1, 1977."

TITLE 59—OFFICES AND OFFICERS

Chapter

2. Executive officers—classification and election, 59-203.
3. Disqualifications and restrictions, 59-301.
4. Appointments, nomination and oath of office, 59-413.
5. Prohibitions and general provisions applicable to public officers, 59-501, 59-514, 59-515, 59-519, 59-530.1 to 59-530.4, 59-538, 59-539.
6. Resignations and vacancies, 59-605, 59-609 to 59-630.
7. The fiscal year—official reports, 59-701.1, 59-701.2.
8. Mileage of public officers, 59-801.
9. Classification and compensation of state employees, 59-903 to 59-922.
10. Leaves of absence of employees, 59-1001 to 59-1003, 59-1005, 59-1007.1, 59-1008 to 59-1012.
11. Federal Social Security Act—coverage of certain officers and employees, 59-1102, 59-1102.1, 59-1104 to 59-1106, 59-1108 to 59-1112.
14. Montana salary commission, 59-1401 to 59-1404.
15. State employee group insurance, 59-1501 to 59-1507.
16. Collective bargaining for public employees, 59-1601 to 59-1608, 59-1609 to 59-1617.
17. Code of ethics, 59-1701 to 59-1711.

CHAPTER 2—EXECUTIVE OFFICERS—CLASSIFICATION AND ELECTION

Section

59-203. Certain officers, how elected.

59-203. (111) Certain officers, how elected. The mode of election of the governor, lieutenant-governor, secretary of state, state auditor, attorney general and superintendent of public instruction is prescribed by the constitution.

History: En. Sec. 340, Pol. C. 1895; re-en. Sec. 128, Rev. C. 1907; re-en. Sec. 111, R. C. M. 1921; amd. Sec. 22, Ch. 100, L. 1973. Cal. Pol. C. Sec. 348.

Amendments

The 1973 amendment deleted "state treasurer."

CHAPTER 3—DISQUALIFICATIONS AND RESTRICTIONS

Section

59-301. Age and citizenship.

59-301. (410) Age and citizenship. No person is eligible to hold civil office in this state, who at the time of his election or appointment is not of the age of eighteen (18) years or older and a citizen of this state.

History: En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R. C. M. 1921; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973. Cal. Pol. C. Sec. 841.

Amendments

The 1971 amendment lowered the age requirement from 21 to 19 years.

Chapter 9, Laws of 1973, substituted "eligible to hold" for "capable of holding" near the beginning of the section; reduced the minimum age from nineteen to eighteen years; and inserted "or older" near the end of the section.

Chapter 94, Laws of 1973, reduced the minimum age from nineteen to eighteen years.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 9, and once by Ch. 94. Neither amendatory act mentioned the other, but Ch. 9 incorporated the only change made by Ch. 94. Since the amendments do not appear to conflict, the compiler has used the language of Ch. 9, which embodies the changes made by both amendments.

59-304. (413) Certain officers must reside at the seat of government.

Compiler's Notes

Section 3, Ch. 468, Laws 1977, deleted

reference to "state treasurer" in this section.

CHAPTER 4—APPOINTMENTS, NOMINATION AND OATH OF OFFICE

Section

59-413. Oath, form of.

59-413. (430) Oath, form of. Members of the legislative assembly and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test must be required as a qualification for any office or public trust.

History: Ap. p. Sec. 3, p. 90, L. 1876; re-en. Sec. 575, 5th Div. Rev. Stat. 1879; re-en. Sec. 1067, 5th Div. Comp. Stat. 1887; amd. Sec. 1010, Pol. C. 1895; re-en. Sec. 362, Rev. C. 1907; re-en. Sec. 430, R. C. M. 1921; amd. Sec. 4, Ch. 7, L. 1973; amd. Sec. 23, Ch. 100, L. 1973. Cal. Pol. C. Sec. 904.

Amendments

Chapter 7, Laws of 1973, deleted from the oath form the clauses "and that I have not paid or contributed, or promised to pay or contribute either directly or indirectly, any money or other valuable thing to pro-

cure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to my office other than the compensation allowed by law"; and made minor changes in style.

Chapter 100, Laws of 1973, deleted the same clauses as did Chapter 7.

59-414. (431) Repealed.**Repeal**

Section 59-414 (Sec. 1011, Pol. C. 1895), relating to the taking of the oath by

members of the legislature, was repealed by Sec. 6, Ch. 7, Laws 1973.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

Section

59-501. Certain officers and employees not to be interested in contracts.

59-514. Destruction of old county records may be ordered by commissioners with approval of department of community affairs—destruction of old school district records may be ordered by trustees with approval of the department of community affairs.

59-515. Destruction of old city or town records.

59-519. Appointment of relative to office of trust or emolument unlawful.

59-530.1. Definitions.

59-530.2. Ownership of records.

59-530.3. Official records management—powers and duties.

59-530.4. Outgoing officials—records management duties.

59-538. Travel expense of persons in state service.

59-539. Computation of meal allowance.

59-501. (444) Certain officers and employees not to be interested in contracts. Members of the legislature, state, county, city, town, or town-

ship officers or any deputy or employee thereof, must not be interested in any contract made by them in their official capacity, or by any body, agency, or board of which they are members or employees. In this section:

(1) The term "be interested in" does not include holding a minority interest in a corporation.

(2) The term "contract" does not include:

- a. contracts awarded to the lowest responsible bidder based on competitive bidding procedures, or
- b. merchandise sold to the highest bidder at public auctions, or
- c. investments or deposits in financial institutions which are in the business of loaning or receiving money, or
- d. contracts for professional services.

History: En. Sec. 1020, Pol. C. 1895; re-en. Sec. 368, Rev. C. 1907; re-en. Sec. 444, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1973. Cal. Pol. C. Sec. 920.

lature" for "legislative assembly"; extended the first sentence to deputies and employees; inserted "agency" and "employees" in the final clause of the first sentence; and added the definitions.

Amendments

The 1973 amendment substituted "legis-

59-514. (455.2) Destruction of old county records may be ordered by commissioners with approval of department of community affairs—destruction of old school district records may be ordered by trustees with approval of the department of community affairs. (1) A county officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of county commissioners and with the approval of the department of community affairs.

(2) A school officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of trustees and with the approval of the department of community affairs.

History: En. Sec. 2, Ch. 92, L. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975.

mental relations throughout the section for references to the state examiner; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted references to the department of intergovern-

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.

59-515. (455.3) Destruction of old city or town records. A city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the city or town council or commission and with the approval of the department of community affairs, except that records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of community affairs after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.

History: En. Sec. 3, Ch. 92, L. 1935; amd. Sec. 1, Ch. 65, L. 1974; amd. Sec. 80, Ch. 348, L. 1974; amd. Sec. 37, Ch. 213, L. 1975.

Amendments

Chapter 65, Laws of 1974, substituted "department of intergovernmental relations" near the middle of the section for "state examiner"; and added the exception at the end of the section.

Chapter 348, Laws of 1974, substituted "department of intergovernmental relations" for "state examiner" and made a minor change in phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.

59-519. (456.2) Appointment of relative to office of trust or emolument unlawful. It shall be unlawful for any person or any member of any board, bureau or commission, or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree, or by affinity within the second degree; except that the provisions of this section shall not apply to sheriffs in the appointment of persons as cooks and/or attendants. It shall further be unlawful for any person or any member of any board, bureau or commission, or employee of any department of this state, or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus or commissions, or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree, or by affinity within the second degree.

History: En. Sec. 2, Ch. 12, L. 1933; amd. Sec. 1, Ch. 94, L. 1955; amd. Sec. 27, Ch. 535, L. 1975.

Amendments

The 1975 amendment substituted "ap-

pointment of persons as cooks and/or attendants" for "appointment of females as cooks and/or matrons" near the end of the first sentence; and made minor changes in phraseology.

59-530.1. Definitions. As used in this act the following definitions apply:

(1) "Constitutionally designated and elected officials of the executive branch of government" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, and auditor.

(2) "Official records" means any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a constitutionally designated and elected official of the executive branch of government in transacting his official duties and preserved for informational value or as evidence of a transaction.

History: En. 59-530.1 by Sec. 1, Ch. 441, L. 1977.

ized records retention and destruction program within the historical society for all official records.

Title of Act

An act to provide an efficient central-

59-530.2. Ownership of records. All official records shall remain the property of the state. They shall be delivered by outgoing officials to their

successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this act.

History: En. 59-530.2 by Sec. 2, Ch. 441, L. 1977.

59-530.3. Official records management—powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the department of administration and any committee or council established by law to regulate the retention of public records, establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this act;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives.

History: En. 59-530.3 by Sec. 3, Ch. 441, L. 1977.

59-530.4. Outgoing officials—records management duties. (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office shall be subject to storage, disposal, or transfer in accordance with the provisions of this act.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society shall be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review his official records and isolate any items of a purely personal nature. Such personal papers are not subject to this act but they may be deposited with the official papers, at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of his official records. No restrictions may be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the

confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office shall be decided by a $\frac{3}{4}$ vote of the members of the state records committee.

History: En. 59-530.4 by Sec. 4, Ch. 441,
L. 1977.

59-538. Travel expense of persons in state service. Every elected official, appointed members of boards, commissions, councils, and department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Travel within the state of Montana:

(a) The governor shall be authorized actual and necessary expenses not to exceed \$40 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding \$18 per day plus two dollars (\$2) for the morning meal, three dollars (\$3) for the midday meal, and five dollars (\$5) for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Travel out of the state of Montana:

(a) The governor shall be authorized actual and necessary travel expenses not to exceed seventy dollars (\$70) per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding thirty-seven dollars (\$37) per day plus three dollars (\$3) for the morning meal, four dollars (\$4) for the midday meal, and six dollars (\$6) for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) When other than commercial, non-receiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of seven dollars (\$7) will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of section 43-310.

(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least expensive class service available.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec. 1, Ch. 483, L. 1977.

Amendments

Chapter 10, Laws of 1971, inserted before the first proviso the exception relating to travel in the District of Columbia.

Chapter 295, Laws of 1971, inserted "the lieutenant governor" near the beginning of the first sentence; deleted a former third proviso excepting elective state officers; added "when engaged in state service away from Helena, Montana" to the end of the second sentence; inserted "The lieutenant governor, when directed by the governor to engage in state service" at the beginning of the third sentence; and inserted "Helena" at the end of the third sentence.

The 1973 amendment increased the per diem for travel within the state from \$13.50 to \$16.00; and increased the per diem for travel outside the state from \$22.50 to \$25.00.

The 1974 amendment substituted "public service commissioners" for "railroad commissioners" throughout the section.

The 1975 amendment completely rewrote this section. For former versions, see parent volume and prior amendment notes.

The 1977 amendment deleted "traveling outside the employee's designated travel day and for more than three (3) hours" in the introductory paragraph after "person's designated headquarters"; reduced the governor's travel allowance within the state from \$60 to \$40; increased the per diem within the state for other officials from \$16 to \$18; substituted "subsection (1)(b) or (2)(b)" for "subsection (1)(d) or (2)(d)" at the end of the first sentence of subsection (3); added the second sentence of subsection (3); and made minor changes in phraseology and style.

Constitutionality

Where state constitution states that judge's compensation cannot be diminished, attempts by state legislature to restrict actual and necessary travel expenses of district judges and supreme court justices are unconstitutional and judges are entitled to their actual and necessary expenses for subsistence and lodging and nineteen cents per mile travel expenses, when using own transportation. Matter of Actual Necessary Expense of Judges, — M —, 541 P 2d 345.

59-539. Computation of meal allowance. (1) To be eligible for the meal allowance provided in section 59-538, an employee must have been in a travel status for more than three (3) continuous hours. If eligible, an employee receives:

(a) the morning meal allowance if in a travel status between the hours of 12:01 a.m. and 10 a.m.;

(b) the midday meal allowance if in a travel status between the hours of 10:01 a.m. and 3 p.m.; and

(c) the evening meal allowance if in a travel status between the hours of 3:01 p.m. and 12 midnight.

(d) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift.

(e) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(2) "Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.

(3) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

History: En. Sec. 3, Ch. 66, L. 1955; amd. Sec. 4, Ch. 495, L. 1973; amd. Sec. 1, Ch. 213, L. 1974; amd. Sec. 2, Ch. 439, L. 1975; am. Sec. 2, Ch. 483, L. 1977.

Amendments

The 1973 amendment increased the allowance per day for mid-day meals from \$1.25 to \$2.00, near the end of the first sentence.

The 1974 amendment inserted "Except as herein provided" at the beginning of the third sentence; deleted a proviso from the third sentence which read "no per diem, excepting an allowance not to exceed two dollars (\$2) per day for moneys actually expended for mid-day meals, shall be allowed when the departure is at or after 8:00 a. m. and the return on the same day is at or prior to 6:00 p. m."; and inserted the fourth and fifth sentences, now the first and second sentences of subsection (2).

The 1975 amendment divided the section into subsections; completely rewrote subsection (1); substituted "allowance may be an amount not to exceed three dollars (\$3) per day for a midday meal" in subsection (2) for "allowance shall be an amount not to exceed two dollars (\$2) per day for moneys actually expended for mid-day meals"; substituted at the end of subsection (2) "exceed two dollars (\$2) for a morning meal and five dollars (\$5) for an

evening meal" for "exceed one dollar and fifty cents (\$1.50) for moneys actually expended for morning meals and three dollars and fifty cents (\$3.50) for moneys actually expended for evening meals"; inserted the next to the last sentence of subsection (2); and added subsection (3). For prior text, see parent volume and 1973 and 1974 amendment notes.

The 1977 amendment substituted "meal allowance" near the beginning of subsection (1) for "travel allowance"; added subdivisions (1)(d) and (1)(e); substituted present subsection (2) for "For persons in state service regularly assigned to an 8 a.m. to 5 p.m. work period, the only per diem allowance may be an amount not to exceed three dollars (\$3) per day for a midday meal when the departure is at or after 7 a.m. and the return on the same day is at or prior to 6 p.m. For persons in state service regularly assigned to work periods other than 8 a.m. to 5 p.m., the employing department may establish a per diem allowance of an amount not to exceed two dollars (\$2) for a morning meal and five dollars (\$5) for an evening meal. Only one of the three (3) allowances provided in subsection (2) may be claimed in any one (1) day. In no case shall any per diem or allowance whatsoever be paid for any absence not exceeding three (3) hours"; and made minor changes in phraseology.

CHAPTER 6—RESIGNATIONS AND VACANCIES

Section

- 59-605. Vacancies, how filled when not otherwise provided for—recess appointments.
- 59-609. Elective officer's inability to perform—filling vacancy.
- 59-610. Short title.
- 59-611. Definitions.
- 59-612. Officers subject to recall.
- 59-613. Method of removal cumulative.
- 59-614. Number of electors required for recall petition.
- 59-615. Circulation of recall petitions—limitations.
- 59-616. Filing of recall petitions.
- 59-617. Form of recall petition.
- 59-618. Form of circulation sheets.
- 59-619. Forms not mandatory.
- 59-620. Who may petition—false signatures—penalties.
- 59-621. Submission of circulation sheets—certification of signatures.
- 59-622. County clerk to verify signatures.
- 59-623. Mandamus for refusal to file—injunction.
- 59-624. Resignation of officer—proclamation of election.
- 59-625. Notification to officer—statement of justification.
- 59-626. Notice of recall election.
- 59-627. Form of ballot.
- 59-628. Officer to remain in office until results declared—filling of vacancy.
- 59-629. Conduct of special elections.
- 59-630. Expenses of election.

59-604. (513) Repealed.

Repeal

Section 59-604 (Sec. 1103, Pol. C. 1895), relating to vacancies in the legislative

assembly, was repealed by Sec. 5, Ch. 198, Laws 1977 and by Sec. 31, Ch. 309, Laws 1977.

59-605. (514) Vacancies, how filled when not otherwise provided for—recess appointments. (1) When any office becomes vacant, and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one (1) house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

History: En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R. C. M. 1921; amd. Sec. 1, Ch. 388, L. 1973. Cal. Pol. C. Sec. 999.

a commission, to expire at the end of the next legislative assembly or at the next election by the people" at the end of subsection (1); added subsection (2); and made minor changes in style.

Amendments

The 1973 amendment designated the entire former section as subsection (1); substituted "appointing a qualified person to fill the unexpired term of the person whose office became vacant" for "granting

Repealing Clause

Section 2 of Ch. 388, Laws 1973 read "Section 59-606, R. C. M. 1947, is repealed."

59-606. (515) Repealed.

Repeal

Section 59-606 (Sec. 1105, Pol. C. 1895), relating to vacancies occurring during a

recess of the legislature, was repealed by Sec. 2, Ch. 388, Laws 1973. For new law, see sec. 59-605.

59-607. (516) Vacancies in certain state offices, how filled.

Compiler's Notes

Section 3, Ch. 468, Laws 1977, deleted

reference to "state treasurer" in this section.

59-609. Elective officer's inability to perform—filling vacancy. (1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of his position, a vacancy exists.

(2) When a written declaration, made as hereinafter provided, is transmitted to the legislature, that any such officer is unable to discharge the powers and duties of this office, the legislature may convene in the manner provided for the convening of special sessions to determine whether such disability exists, or it may defer such determination to the next regular session of the legislature.

(3) If the legislature, within twenty-one (21) days after convening, whether in regular or special session, determines by two-thirds (2/3) vote of its members that such officer is unable to discharge the powers and duties of his office, this office shall be declared to be vacant and shall be filled as provided by the constitution of the state of Montana or laws enacted pursuant thereto.

(4) The written declaration required hereunder shall be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration shall be made by the governor and attorney general; if the attorney general is the subject of the declaration, the declaration shall be made by the governor and secretary of state.

History: En. Sec. 1, Ch. 343, L. 1973.

Title of Act

An act to provide a method to deter-

mine permanent disability of executive officers to implement article VI, section 6(2) of the 1972 Montana constitution.

59-610. Short title. This act shall be cited as the "Montana Recall Act".

History: En. Sec. 1, I.M. No. 73, approved November 2, 1976; amd. Sec. 2, Ch. 364, L. 1977.

Title of Act

An act amending the Montana Recall and Advisory Recall Act, Initiative No. 73, to clarify the scope of its application, to specify grounds for recall, to establish more defined responsibilities on the part of petitioners, to correct and clarify certain administrative provisions of the act, to remove advisory recall procedures for U. S. district judges, to remove the application of the act to representatives in

congress, to correct certain errors in form, and to repeal conflicting statutes; amending sections 1, 2, 4, 7, 8, 10, 11, 13, 15, 16, 17, and 19 of the Montana Recall and Advisory Recall Act; and repealing sections 11-721.1, 11-3132, 11-3220, and 11-3540, R.C.M. 1947, and sections 20, 21, 22, 23, and 24 of the Montana Recall and Advisory Recall Act.

Amendments

The 1977 amendment deleted "and advisory recall" after "recall"; and made minor changes in punctuation.

59-611. Definitions. As used in the Montana Recall Act, the following definitions apply:

(1) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(2) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

History: En. 59-611 by Sec. 1, Ch. 364, L. 1977.

59-612. Officers subject to recall. (1) Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, neglect of duty, or conviction of malfeasance or misfeasance in office, violation of his oath of office or a felony offense enumerated in Title 94 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct.

History: En. Sec. 2, I.M. No. 73, approved November 2, 1976; amd. Sec. 3, Ch. 364, L. 1977.

Amendments

The 1977 amendment designated the former first sentence as subsection (1); substituted subsection (2) for the last part of the former first sentence which read

"by the qualified electors of the state or political subdivision"; substituted subsection (3) for a former second sentence which read "Any reason causing the electorate dissatisfaction with a public official shall be sufficient grounds for recall, notwithstanding good faith attempts to perform the duties of his office"; and made a minor change in punctuation.

59-613. Method of removal cumulative. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

History: En. Sec. 3, I.M. No. 73, approved November 2, 1976.

59-614. Number of electors required for recall petition. A recall petition may not name more than one officer to be recalled. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equalling at least 10% of the number of persons registered to vote at the preceding state general election. A petition for the recall of a state-district officer must contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote in the last preceding election in that district. Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote at the preceding county general election. Recall petitions for elected or appointed officers of municipalities or school districts shall contain the signatures of qualified electors equalling at least 20% of the number of persons registered to vote at the preceding general election for the municipality or school district.

History: En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977.

Amendments

The 1977 amendment substituted "persons registered to vote" throughout the

section for "persons voting"; inserted the third sentence; substituted references to municipalities and school districts two places in the last sentence for references to cities, towns and other political subdivisions; and made minor changes in phraseology.

59-615. Circulation of recall petitions—limitations. No recall petition shall be filed against an officer until he has held office for two months.

No recall petition may be filed against an officer for whom a recall election has been held for a period of two years during his term of office, unless the state or political subdivision or subdivisions financing such recall election is first re-imburSED for all expenses of the preceding recall election.

History: En. Sec. 5, I.M. No. 73, approved November 2, 1976.

59-616. Filing of recall petitions. Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed state, county or city or town officers shall be filed with the secretary of state, county clerk or city or town clerk respectively. Recall petitions for appointed officers from other political subdivisions shall be filed with the county clerk if the boundaries of the political subdivisions lie wholly within one (1) county or otherwise with the secretary of state.

History: En. Sec. 6, I.M. No. 73, approved November 2, 1976.

59-617. Form of recall petition. (1) The form of the recall petition shall be substantially as follows:

WARNING

A person who knowingly signs a name other than his own to this petition or who signs his name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable _____, Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether _____, holding the office of _____, should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). By his signature each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition shall contain the heading and reasons for the proposed recall as prescribed above.

History: En. Sec. 7, I.M. No. 73, approved November 2, 1976; amd. Sec. 5, Ch. 364, L. 1977.

Amendments

The 1977 amendment designated the former section as subsection (1); inserted the warning statement; substituted "qualified electors" in the petition form for "citizens and electors"; inserted "state-district or" before "political subdivision" in the petition form; substituted "petition that an election be held as provided by law on the question of whether -----, holding the office of -----, should be recalled" in the petition form for "demand that -----, holding the office of -----, be recalled"; substituted "a gen-

eral statement of the reasons for recall" in the petition form for "reasons"; substituted "by his signature each signer certifies" in the petition form for "that a special election therefore be called; that we, each for himself, say"; added "to the best of my knowledge and belief" at the end of the petition form; deleted the former last paragraph which read "A recall petition shall contain a general statement of not more than 200 words stating the reason for recall. Such a statement is solely for information of the electors and set forth any reason causing the dissatisfaction with the public official and may be political rather than legal in nature"; added subsection (2); and made minor changes in phraseology and punctuation.

59-618. Form of circulation sheets. (1) The signatures on each petition shall be placed on sheets of paper known as "circulation sheets". Each circulation sheet shall be substantially 8½ x 14 inches or a continuous sheet may be folded so as to meet this size limitation. Such circulation sheets shall be ruled with a horizontal line one and one-half inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year.

History: En. Sec. 8, I.M. No. 73, approved November 2, 1976; amd. Sec. 6, Ch. 364, L. 1977.

Amendments

The 1977 amendment added the provisions for folding circulation sheets in the second sentence of subsection (1); deleted provisions for dividing circulation

sheets into vertical columns and using the columns for signatures and addresses and a warning statement containing the penalty for improperly signing a petition in subsection (1); deleted requirements for circulating a petition in sections from subsection (2); added subsections (3) through (5); and made minor changes in phraseology and punctuation.

59-619. Forms not mandatory. The forms prescribed in this act are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors.

History: En. Sec. 9, I.M. No. 73, approved November 2, 1976.

59-620. Who may petition—false signatures—penalties. Every person who is a qualified elector of this state may sign a petition for recall of a state officer. Every person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district. Every person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. However, if a political subdivision is divided into election districts, a person must be a qualified elector in the election district to be eligible to sign a petition to recall an officer elected from that election district. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the recall, or who is not at the time of the signing a qualified elector or any person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-204 or 94-7-209, as applicable.

History: En. Sec. 10, I.M. No. 73, approved November 2, 1976; amd. Sec. 7, Ch. 364, L. 1977.

Amendments

The 1977 amendment inserted the second and fourth sentences; substituted the language after "qualified elector" at the

end of the last sentence for "or any officer or person knowingly and wilfully violating any provision of this section, shall be punished by a fine not to exceed \$500, or by imprisonment in the state penitentiary not to exceed 2 years, or by both"; and made a minor change in phraseology.

59-621. Submission of circulation sheets—certification of signatures.

(1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under [section 8 of the Montana Recall Act, as amended].

(2) An affidavit, in substantially the following form, shall be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

(Signature)

Subscribed and sworn before me this _____ day of _____, 19____

(Person authorized to take oaths)

(Title or notarial information)

Seal

History: En. 59-621 by Sec. 8, Ch. 364, L. 1977.

59-622. County clerk to verify signatures. (1) The county clerk in each county in which such a petition is signed shall compare the signatures of the electors in such county with registration signatures on file in such clerk's office and, if satisfied the signatures are genuine, certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable _____, Secretary of State of the State of Montana (or name and title of other officer):

I, _____, _____ (title) of _____ County certify that I have compared the signatures on _____ sheets (specifying number of sheets) of the petition for recall No. _____ attached with the signatures of the registered voters as they appear upon the registration records of my office, and I believe _____ (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: _____ (Date)

_____ (Signature)

Seal _____ (Title)

(2) Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the registered voters whose signatures are certified, and the secretary of state or other officer receiving the recall petition shall consider and count only such signatures as are certified; provided that the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters which prove to be genuine and such signatures shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk may not retain any petition or any part of it for more than 15 days. At the expiration of such period the county clerk shall deliver the same to the person with whom the petition is required to be filed.

History: En. Sec. 11, I.M. No. 73, approved November 2, 1976; amd. Sec. 9, Ch. 364, L. 1977.

Amendments

The 1977 amendment substituted "in substantially the following form" before the certification form in subsection (1) for "as follows"; substituted "valid for the purpose of the petition" at the end of the first sentence of the form for "genuine"; deleted the former last sentence of the form which stated a belief that the re-

maining signatures were not genuine, except those enumerated as not appearing on the registration records; added the present last sentence of the form; substituted "officer with whom the recall petition is filed" in subsection (2) for "secretary of state, or city clerk or town clerk"; substituted "with whom the petition is required to be filed" at the end of subsection (3) for "from whom it was received with such clerk's certification"; and made minor changes in style, phraseology and punctuation.

59-623. Mandamus for refusal to file—injunction. If the secretary of state, county clerk, city or town clerk or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within ten (10) days after such refusal apply to the district court for a writ of mandamus. If it is de-

terminated that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the Writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing or recall election.

All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible. Any aggrieved party may file an appeal within ten (10) days after any adverse order or decision as provided by law.

History: En. Sec. 12, I.M. No. 73, approved November 2, 1976.

59-624. Resignation of officer—proclamation of election. If the officer named in the petition for recall submits his resignation in writing, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law, provided that the officer named in the petition for recall may not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election shall be called unless the filing is within 90 days of a general election, in which case the question shall be placed on a separate ballot at the same time as the general election. The call of a special election shall be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.

History: En. Sec. 13, I.M. No. 73, approved November 2, 1976; amd. Sec. 10, Ch. 364, L. 1977.

Amendments

The 1977 amendment substituted "a

separate ballot at the same time as the general election" at the end of the third sentence for "the general election ballot"; inserted "or state-district" in the fourth sentence; and made minor changes in phraseology and punctuation.

59-625. Notification to officer—statement of justification. Upon filing the petition, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice shall state that a recall petition has been filed, shall set forth the reasons contained therein and shall notify the officer named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than two hundred (200) words giving reasons why he should not be recalled. No such statement of justification shall be printed on the ballot unless it is delivered to the filing official within ten (10) days of the date notice is given.

History: En. Sec. 14, I.M. No. 73, approved November 2, 1976.

59-626. Notice of recall election. The notice of a recall election shall be in substantially the following form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on _____ (Date) for the purpose of voting upon the recall of _____ who holds the office of _____.

DATED at _____, _____ (Date)

History: En. Sec. 15, I.M. No. 73, approved November 2, 1976; amd. Sec. 11, Ch. 364, L. 1977.

Amendments

The 1977 amendment inserted "who holds the office of _____" in the form; and made minor changes in phraseology.

59-627. Form of ballot. (1) The ballot at such recall election shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of reasons why he should not be recalled. Then the question of whether the officer should be recalled shall be placed on the ballot in a form similar to the following:

FOR recalling _____ who holds the office of _____

AGAINST recalling _____ who holds the office of _____

(2) The form of the ballot shall be approved as provided in the election laws of this state.

History: En. Sec. 16, I.M. No. 73, approved November 2, 1976; amd. Sec. 12, Ch. 364, L. 1977.

tion (1); substituted the last sentence of subsection (1) for two sentences which set out instructions to voters to be printed on the ballot and described the form of the ballot; added subsection (2); and made minor changes in style and phraseology.

Amendments

The 1977 amendment deleted "shall be entitled 'Recall Ballot'" after "recall election" in the first sentence of subsec-

59-628. Officer to remain in office until results declared—filling of vacancy. The officer named in the recall petition continues in office until he resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy shall be filled as provided by law, provided that the officer recalled may in no event be appointed to fill the vacancy.

History: En. Sec. 17, I.M. No. 73, approved November 2, 1976; amd. Sec. 13, Ch. 364, L. 1977.

signs or" in the first sentence; substituted "recall" before "election" in the first sentence for "special"; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment inserted "he re-

59-629. Conduct of special elections. Special elections for recall shall be conducted and the results canvassed and certified in all respects as general elections, except as herein otherwise provided. The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards and other public officials who conduct general elections, are conferred and imposed upon similar officers conducting recall elections under the provisions of this article together with the penalties prescribed for the breach thereof.

History: En. Sec. 18, I.M. No. 73, approved November 2, 1976.

59-630. Expenses of election. Expenses of a recall election shall be paid in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election.

History: En. Sec. 19, I.M. No. 73, approved November 2, 1976; amd. Sec. 14, Ch. 364, L. 1977.

Amendments

The 1977 amendment substituted the first sentence for a sentence providing that expenses of a recall election for a state officer be paid from state funds and for an officer of a political subdivision be paid from funds of that subdivision; and added the second and third sentences.

Repealing Clause

Section 15 of Ch. 364, Laws 1977 read "Sections 11-721.1, 11-3132, 11-3220, and 11-3540, R.C.M. 1947, and sections 20, 21, 22, 23, and 24 of the Montana Recall and Advisory Recall Act are repealed."

Separability and Construction

Section 25 of the Montana Recall and Advisory Recall Act, I.M. No. 73, approved November 2, 1976 read: "If any one or more articles, provision, section, subsection, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding such unconstitutionality. The people hereby declare that they would have passed this part, and each article, provision, section, subsection, sentence, clause phrase or word thereof, irrespective of the fact that any one or more article, provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional."

CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS

Section

- 59-701.1. Reappropriation of valid obligations at end of each fiscal year.
59-701.2. Obligations at fiscal year end shall be encumbered.

59-701. (518) Fiscal year and financial reports.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted

"department of administration" in this section for "state controller."

59-701.1. Reappropriation of valid obligations at end of each fiscal year.

Purchase orders issued and accrued expenses approved by the department of administration shall be encumbered at the end of each fiscal year in the department of administration's accounts, and are hereby reappropriated for the succeeding fiscal year.

History: En. Sec. 2, Ch. 84, L. 1955; amd. Sec. 1, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1971 amendment deleted "Accounting control of all" at the beginning of the section; inserted "and accrued expenses approved" after "issued"; substituted "shall be" before "encumbered" for "which are";

deleted "because of incompleteness of the contract" after "accounts"; substituted "and are hereby" before "reappropriated" for "shall be"; deleted "and re-encumbered" after "appropriated"; and made a minor change in phraseology.

The 1974 amendment substituted "department of administration" in two places for "state controller."

59-701.2. Obligations at fiscal year end shall be encumbered. Any valid obligation not paid within the fiscal year shall be encumbered for payment thereof at the end of each fiscal year in the department of administration's

accounts. An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created, except construction contracts, which upon approval of the department of administration, may be encumbered for only that portion of the contract for which services or materials have been received by the fiscal year's end.

History: En. Sec. 3, Ch. 84, L. 1955; amd. Sec. 3, Ch. 127, L. 1961; amd. Sec. 2, Ch. 267, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

wrote the section. For previous text, see parent volume.

The 1974 amendment substituted "department of administration" in two places for "state controller."

Amendments

The 1971 amendment completely re-

59-705. (522) Repealed.

Repeal

Section 59-705 (Sec. 314, Pol. C. 1895),

relating to semiannual reports, was repealed by Sec. 11, Ch. 61, Laws 1977.

CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

Section

59-801. Mileage.

59-801. (4884) Mileage. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own automobiles in the performance of official duties, are entitled to collect mileage for the distance actually traveled by automobile and no more, unless otherwise specifically provided by law.

(2) When the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of 3 cents less per mile than the mileage rate allowed by the United States internal revenue service for the preceding year shall be paid.

(3) When a privately owned vehicle is used because a government-owned or leased vehicle is not available or because such use is in the best interest of the governmental entity, a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year shall be paid for the first 1,000 miles and 3 cents per mile less for all miles thereafter traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own airplanes in the performance of official duties, are entitled to collect mileage for the distance actually traveled at a rate of 20 cents per statute mile and no more, unless specifically provided by law.

(5) This section does not alter 43-310.

(6) The department of administration shall prescribe rules necessary for the effective administration of this section for state government.

History: En. Sec. 4590, Pol. C. 1895; L. 1933; amd. Sec. 1, Ch. 121, L. 1941; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L.

1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967; amd. Sec. 1, Ch. 495, L. 1973; amd. Sec. 9, Ch. 355, L. 1974; amd. Sec. 3, Ch. 439, L. 1975; amd. Sec. 1, Ch. 532, L. 1975; amd. Sec. 1, Ch. 453, L. 1977.

Amendments

The 1973 amendment increased the automobile mileage rate from nine cents to twelve cents; and substituted "per mile by the shortest regularly traveled automobile route when travel is by private plane" for "per air mile for the distance actually traveled by airplane."

The 1974 amendment deleted "at a rate of twelve cents (12¢) per mile" from after "entitled to collect mileage" and before "for the shortest regularly traveled automobile route" in subsection (1); added subsections (2) and (3); and made minor changes in phraseology and style.

Chapter 439, Laws of 1975, substituted the present subsection (2) for "Where the individual is authorized to operate a privately owned vehicle even though a state owned vehicle is available, a rate of nine cents (9¢) per mile shall be paid"; substituted the present subsection (3) for "Where a privately owned vehicle is used because a state owned or leased vehicle is not available for use or it is in the best interest of the state that a privately owned vehicle be used, twelve cents (12¢) per mile shall be paid"; added subsection (5); and made minor changes in phraseology.

Chapter 532, Laws of 1975, inserted "Automobiles" at the beginning of sub-

section (1); deleted "or airplanes" after "their own automobiles" in subsection (1); deleted "and for the shortest regularly traveled automobile route when travel is by private plane" after "traveled by automobile" in subsection (1); added subsection (4); and made minor changes in phraseology.

The 1977 amendment deleted "township officers" after "state officers" near the beginning of subsections (1) and (4); inserted "and employees" after "state officers" near the beginning of subsections (1) and (4); deleted "except sheriffs" after "all other persons" in subsections (1) and (4); inserted "paid from public funds" in subsections (1) and (4); deleted a proviso that nothing therein affect section 43-310 from the end of subsection (1); designated the former last sentence of subsection (4) as subsection (5); redesignated former subsection (5) as subsection (6); and made minor changes in phraseology, punctuation and style.

Constitutionality

Where state constitution states that judge's compensation cannot be diminished, attempts by state legislature to restrict actual and necessary travel expenses of district judges and supreme court justices are unconstitutional and judges are entitled to their actual and necessary expenses for subsistence and lodging and nineteen cents per mile travel expenses, when using own transportation. Matter of Actual Necessary Expense of Judges, — M —, 541 P 2d 345.

59-802. (4884.1) Repealed.

Repeal

Section 59-802 (Sec. 1, Ch. 80, L. 1923; Sec. 3, Ch. 16, L. 1933; Sec. 2, Ch. 121, L. 1941; Sec. 2, Ch. 201, L. 1947; Sec. 2, Ch. 93, L. 1949; Sec. 2, Ch. 124, L. 1951; Sec. 2, Ch. 106, L. 1961; Sec. 2, Ch. 123, L. 1963; Sec. 3, Ch. 48, L. 1967; Sec. 2, Ch. 495, L. 1973; Sec. 10, Ch. 355, L. 1974),

relating to mileage allowance for use of private transportation, was repealed by Sec. 64, Ch. 439, Laws of 1975. Section 2, Ch. 532, Laws of 1975 which purported to amend this section, was superseded by Sec. 64, Ch. 439, Laws of 1975 which repealed the section.

CHAPTER 9—CLASSIFICATION AND COMPENSATION OF STATE EMPLOYEES

Section

59-903. Definitions.

59-904. Officers and employees excepted from provisions of act.

59-905. Personnel classification plan—development.

59-906. Guidelines for classification.

59-907. Review of positions—change in classification.

59-908. List of positions maintained—contents.

59-909. Determination of number and classes of employees in each agency.

59-910. Budget director authorization for increase of salary or wage of class.

59-911. Budget director authorization for increase in number and class of positions of agency.

59-912. No limitation on legislative authority.

59-913. Functions and duties of department—delegation of authority—policies.

- 59-914. Merit system continued.
- 59-915. Definitions.
- 59-916. Procedures for utilizing pay schedules.
- 59-917. Pay matrix for fiscal year ending June 30, 1978.
- 59-918. Pay matrix for fiscal year ending June 30, 1979.
- 59-919. Allocation between wages and health insurance.
- 59-920. Longevity allowance.
- 59-921. Exceptions for collective bargaining.
- 59-922. Rules.

59-901, 59-902. Repealed.

Repeal

Sections 59-901 and 59-902 (Secs. 1, 2, Ch. 30, L. 1943; Sec. 2, Ch. 176, L. 1949; Sec. 17, Ch. 251, L. 1953), authorizing the state board of examiners to fix the number, salaries and terms of assistants to state officers, were repealed by Sec. 3, Ch. 272, Laws 1971. Sec. 6, Ch. 272, Laws

1971 provided that repeal be effective upon the date the governor signs an executive order implementing chapter 2 of Title 82A, or on December 31, 1972, whichever occurs first. Executive Reorganization Order 4-71, signed by the Governor and effective on August 20, 1971, accomplished that purpose.

59-903. Definitions. As used in this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(2) "Department" means the department of administration.

(3) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in 59-904(9). The personal staff of each of the elected officials may not exceed 10 unless otherwise approved by the department according to criteria developed by the department.

(4) "Program" means a combination of planned efforts to provide a service.

(5) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time or intermittent employment of one person.

History: En. Sec. 1, Ch. 440, L. 1973; amd. Sec. 1, Ch. 488, L. 1977.

employees must be approved by the department of administration; and creating a board for the hearing of grievances that result from the implementation of this act.

Title of Act

An act to provide that the department of administration shall develop a wage and salary plan for state employees for submission to the 1975 legislature and be granted immediate authority to develop a personnel classification plan; providing that salary increases, changes in position classifications and changes in number of

Amendments

The 1977 amendment inserted subsection (3); redesignated former subsections (3) and (4) as subsections (4) and (5); and made minor changes in phraseology and punctuation.

59-904. Officers and employees excepted from provisions of act. This act does not apply to the following positions in state government:

- (1) elected officials and their chief deputy and executive secretary;
- (2) officers and employees of the legislative branch;
- (3) judges and employees of the judicial branch;

- (4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;
- (5) officers or members of the militia;
- (6) agency heads appointed by the governor;
- (7) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (8) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;
- (9) teachers under the authority of the department of institutions;
- (10) personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from sections 59-909, 59-910, and 59-911 of this act, and section 82A-1014;
- (11) legal services staff and the special assistant attorneys general under the direct control of the attorney general.

History: En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 488 and once by Ch. 565. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment inserted "and employees" in the caption and in subdivisions (2) and (3); added "and their chief deputy and executive secretary" to subdivision (1); inserted "and professional administrative" and "with individual contracts" in subdivision (7); added subdivi-

sion (8), now subdivision (9); and made a minor change in punctuation.

The 1975 amendment inserted subdivision (8); and redesignated former subdivision (8) as (9).

Chapter 488, Laws of 1977, added subdivision (10) relating to legal services staff and attorneys and now designated as subdivision (11).

Chapter 565, Laws of 1977, inserted subdivision (9) relating to teachers under the authority of the department of institutions; and redesignated former subdivision (9) as subdivision (10).

Effective Date

Section 2 of Ch. 256, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

59-905. Personnel classification plan—development. The department shall develop a personnel classification plan for all state positions and classes of positions in state service, following hearings involving affected employees and employee organizations, except those exempt in section 2 [59-904] of this act.

History: En. Sec. 3, Ch. 440, L. 1973.

59-906. Guidelines for classification. (1) In providing for the classification plan the department shall group all positions in the state service into defined classes based on similarity of duties performed, responsibilities assumed, and complexity of work so that:

- (a) similar qualifications of education, experience, knowledge, skill and ability can be required of applicants for each position in the class;
- (b) the same title can be used to identify each position in the class;

(c) similar pay may be provided, under the same conditions, with equity to each position within the class.

(2) A class may consist of only one (1) position.

History: En. Sec. 4, Ch. 440, L. 1973.

59-907. Review of positions—change in classification. (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities.

(2) Employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions.

(3) The period of time for which retroactive pay for a classification or position appeal may be awarded under this chapter or under 82A-1014 may not extend beyond 30 days prior to the date the appeal was filed. This provision shall not affect a classification or position appeal already in process on the effective date of this act.

(4) Anything relevant to the determination of reasonable classifications and grade levels for state employees shall be a negotiable item appropriate for the consideration of the state and exclusive representatives under the provisions of Title 59, chapter 16.

History: En. Sec. 5, Ch. 440, L. 1973; amd. Sec. 1, Ch. 166, L. 1975; amd. Sec. 1, Ch. 471, L. 1977.

Section 8 of Ch. 440, Laws 1973 read "The wage and salary plan shall not decrease the current wage or salary or the value of fringe benefits provided by law to an employee in the state service before the adoption of the plan."

Temporary Provisions

Section 6 of Ch. 440, Laws 1973 read "The department shall develop a wage and salary plan for presentation to the 1975 legislature. If adopted by the 1975 legislature, the wage and salary plan shall be integrated with the personnel classification plan to ensure that positions within classes are paid at similar rates of pay after considering different rates of pay that may result from merit increases and years of state service."

Section 7 of Ch. 440, Laws 1973 read "In developing the wage and salary plan the department shall consider all factors, including the results of meetings with employees and employee organizations, that are necessary to ensure that the plan will continuously enable the state service to attract and retain an adequate number of professional, technical and administrative personnel."

Amendments

The 1975 amendment added the second sentence.

The 1977 amendment divided the section into subsections; inserted subsection (3); and made minor changes in phraseology and punctuation.

Effective Dates

Section 2 of Ch. 166, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 26, 1975.

Section 2 of Ch. 471, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 26, 1977.

59-908. List of positions maintained—contents. To facilitate state budgeting, and as directed by the budget director, each agency shall maintain a list of current authorized positions, the number of positions in each class and the salaries or wages being paid, appropriated or proposed for each class.

History: En. Sec. 9, Ch. 440, L. 1973; amd. Sec. 1, Ch. 181, L. 1975.

Amendments

The 1975 amendment substituted "budget director" for "department."

59-909. Determination of number and classes of employees in each agency. (1) Based on documentation to be submitted by each agency, the department shall determine the classes of positions of employees of each agency or program thereof before the beginning of each fiscal year. At any time, upon request of the agency, the department may amend the classes of positions of employees in any agency or program thereof.

(2) Based on documentation to be submitted by each agency, the budget director shall determine the number of positions and employees (full-time equivalents) of each agency or program thereof prior to preparation of the executive budget and before the beginning of each fiscal year. At any time, upon the request of the agency, the budget director may amend the number of positions or employees (full-time equivalents) in any agency or program thereof.

(3) This section does not limit legislative authority to amend the determinations of the department or the budget director.

History: En. Sec. 10, Ch. 440, L. 1973; amd. Sec. 2, Ch. 181, L. 1975.

Amendments

The 1975 amendment divided the section into subsections; substituted "the classes of positions of employees" in both sentences of subsection (1) for "the number and classes of positions or number of employees"; deleted "and submit the deter-

minations to the governor for approval or amendment" before "before the beginning of each fiscal year" in the first sentence of subsection (1); deleted "with the approval of the governor" after "the department may" in the second sentence of subsection (1); inserted subsection (2); added "or the budget director" to the end of subsection (3); and made minor changes in phraseology.

59-910. Budget director authorization for increase of salary or wage of class. An agency may not increase the salary or wage of any class of positions without authorization of the budget director.

History: En. Sec. 11, Ch. 440, L. 1973; amd. Sec. 3, Ch. 181, L. 1975.

Amendments

The 1975 amendment substituted "budget director" for "department."

59-911. Budget director authorization for increase in number and class of positions of agency. An agency may not increase the number and class of positions under its authority without the authorization of the budget director.

History: En. Sec. 12, Ch. 440, L. 1973; amd. Sec. 4, Ch. 181, L. 1975.

Amendments

The 1975 amendment substituted "budget director" for "department."

59-912. No limitation on legislative authority. This act does not limit the authority of the legislature relative to appropriations for salary and wages; and the budget director shall adjust its determinations in accordance with legislative appropriations.

History: En. Sec. 13, Ch. 440, L. 1973; amd. Sec. 5, Ch. 181, L. 1975.

Amendments

The 1975 amendment substituted "budget director" for "department."

59-913. Functions and duties of department—delegation of authority—policies. (1) The department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state, and make available the facilities of the department to this end;

(b) foster and develop programs for the improvement of employee effectiveness including training, safety, health, counseling and welfare;

(c) investigate from time to time the operation and effect of this act and the policies made thereunder and report the findings and recommendations to the governor;

(d) establish policies, procedures and forms for the maintenance of records of all employees in the state service;

(e) apply and carry out this act and the policies thereunder, and perform any other lawful acts which may be necessary or desirable to carry out the purposes and provisions of this act.

(2) The department may delegate authority granted to it under this chapter to agencies in the state service that effectively demonstrate the ability to carry out the provisions of this act, provided that such agencies remain in compliance with policies, procedures, time tables and standards established by the department.

(3) The department shall issue personnel policies for the state. Adequate public notice shall be given to all interested parties of proposed changes or additions to the personnel policies before the date they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date they are to take effect.

History: En. Sec. 14, Ch. 440, L. 1973.

59-914. Merit system continued. The merit system, established in 1940 by certain state agencies of state government, as a requirement for receipt of federal funds, shall continue to operate for those agencies under the policies and procedures established by the merit system council.

History: En. Sec. 16, Ch. 440, L. 1973.

Separability Clause

Section 17 of Ch. 440, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid

parts remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

59-915. Definitions. As used in this act, except for the section amending 11-1024, the following definitions apply:

(1) "Employee" means any state employee other than an employee excepted under 59-904 from the statewide classification system.

(2) "Compensation" means the annual wage or salary plus the annual state contribution of health insurance premiums under provisions of 11-1024.

History: En. 59-915 by Sec. 1, Ch. 563, L. 1977.

Title of Act

An act to establish and fund a compensation plan for state employees for the 1979 biennium; amending section 11-1024, R.C.M. 1947.

59-916. Procedures for utilizing pay schedules. (1) The pay matrix provided in 59-917 indicates the annual compensation for the fiscal year ending June 30, 1978, for each step and grade for positions classified under provisions of law. Except as provided in 59-921 for collective bargaining units, the compensation of each employee shall, on the first day of the first pay period in July, 1977, as determined by the budget director, be that amount which corresponds to the grade and step occupied on June 30, 1977. The employee will advance one step on the employee's anniversary date as determined by the department of administration. Provided that if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of 1977, he or she will advance one step on the first day of that pay period.

(2) The pay matrix provided in 59-918 indicates the annual compensation for the fiscal year ending June 30, 1979, for each step and grade for positions classified under provisions of law. Except as provided in 59-921 for collective bargaining units, the compensation of each employee shall, on the first day of the first pay period in July, 1978, as determined by the budget director, be that amount which corresponds to the grade and step occupied on June 30, 1978. The employee will advance one step on the employee's anniversary date as determined by the department of administration. Provided that if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of 1978, he or she will advance one step on the first day of that pay period.

History: En. 59-916 by Sec. 2, Ch. 563,
L. 1977.

59-917. Pay matrix for fiscal year ending June 30, 1978.

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11	STEP 12	STEP 13
1.0			5,206	5,323	5,410	5,498	5,611	5,725	5,846	5,968	6,047	6,128	6,209
2.0	5,377	5,498	5,611	5,725	5,846	5,968	6,094	6,222	6,349	6,477	6,564	6,651	6,738
3.0	5,836	5,968	6,094	6,222	6,349	6,477	6,617	6,759	6,900	7,041	7,133	7,228	7,329
4.0	6,334	6,477	6,617	6,759	6,900	7,041	7,189	7,336	7,497	7,658	7,766	7,872	7,980
5.0	6,885	7,041	7,189	7,336	7,497	7,658	7,826	7,994	8,168	8,342	8,457	8,570	8,691
6.0	7,488	7,658	7,826	7,994	8,168	8,342	8,523	8,705	8,893	9,081	9,208	9,336	9,463
7.0	8,156	8,342	8,523	8,705	8,893	9,081	9,282	9,483	9,691	9,900	10,040	10,181	10,322
8.0	8,878	9,081	9,282	9,483	9,691	9,900	10,121	10,342	10,570	10,798	10,953	11,108	11,261
9.0	9,678	9,900	10,121	10,342	10,570	10,798	11,040	11,282	11,530	11,778	11,946	12,114	12,289
9.5	10,117	10,349	10,580	10,812	11,050	11,289	11,540	11,792	12,057	12,321	12,496	12,670	12,853
10.0	10,556	10,798	11,040	11,282	11,530	11,778	12,040	12,302	12,583	12,865	13,046	13,227	13,416
10.5	11,037	11,291	11,540	11,793	12,057	12,321	12,598	12,875	13,165	13,459	13,650	13,839	14,037
11.0	11,513	11,778	12,040	12,302	12,583	12,865	13,153	13,442	13,744	14,046	14,248	14,449	14,657
11.5	12,044	12,321	12,598	12,875	13,165	13,459	13,758	14,060	14,376	14,691	14,904	15,115	15,334
12.0	12,575	12,865	13,153	13,442	13,744	14,046	14,361	14,677	15,006	15,335	15,557	15,778	16,006
12.5	13,155	13,459	13,758	14,060	14,376	14,691	15,023	15,357	15,700	16,047	16,277	16,509	16,745
13.0	13,729	14,046	14,361	14,677	15,006	15,335	15,684	16,033	16,395	16,757	16,999	17,240	17,489
14.0	14,988	15,335	15,670	16,006	16,342	16,676	17,012	17,348	17,684	18,019	18,355	18,690	18,857
15.0	16,378	16,757	17,093	17,429	17,764	18,099	18,435	18,770	19,106	19,442	19,777	20,112	20,289
16.0	17,912	18,327	18,663	18,999	19,334	19,670	20,005	20,341	20,676	21,012	21,348	21,682	21,850
17.0	19,578	20,032	20,367	20,703	21,039	21,374	21,710	22,046	22,380	22,716	23,052	23,387	23,555
18.0	21,413	21,911	22,246	22,582	22,918	23,253	23,588	23,924	24,259	24,595	24,931	25,267	25,433
19.0	23,433	23,978	24,314	24,648	24,984	25,320	25,656	25,990	26,326	26,662	26,997	27,333	27,501
20.0	25,636	26,233	26,567	26,903	27,239	27,575	27,910	28,246	28,582	28,916	29,252	29,588	29,756
21.0	28,062	28,716	29,091	29,386	29,722	30,058	30,393	30,728	31,064	31,399	31,735	32,071	32,239
22.0	30,723	31,439	31,775	32,111	32,446	32,782	33,117	33,453	33,788	34,124	34,460	34,795	34,962
23.0	33,634	34,419	34,754	35,090	35,426	35,762	36,096	36,432	36,768	37,103	37,439	37,775	37,942
24.0	36,834	37,694	38,030	38,365	38,700	39,036	39,371	39,707	40,043	40,378	40,713	41,049	41,217
25.0	40,348	41,291	41,626	41,962	42,298	42,632	42,968	43,304	43,639	43,975	44,310	44,646	44,813

History: En. 59-917 by Sec. 3, Ch. 563,
L. 1977.

59-918. Pay matrix for fiscal year ending June 30, 1979.

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11	STEP 12	STEP 13
1.0			5,784	5,911	6,031	6,120	6,210	6,326	6,443	6,567	6,691	6,772	6,855
2.0	5,955	6,086	6,210	6,326	6,443	6,567	6,691	6,820	6,951	7,081	7,212	7,301	7,390
3.0	6,414	6,556	6,691	6,820	6,951	7,081	7,212	7,356	7,501	7,645	7,790	7,884	7,981
4.0	6,912	7,066	7,212	7,356	7,501	7,645	7,790	7,941	8,092	8,256	8,421	8,532	8,640
5.0	7,463	7,630	7,790	7,941	8,092	8,256	8,421	8,593	8,765	8,943	9,121	9,239	9,355
6.0	8,066	8,247	8,421	8,593	8,765	8,943	9,121	9,306	9,493	9,685	9,878	10,008	10,139
7.0	8,734	8,931	9,121	9,306	9,493	9,685	9,878	10,083	10,289	10,502	10,716	10,859	11,003
8.0	9,456	9,670	9,878	10,083	10,289	10,502	10,716	10,942	11,168	11,402	11,635	11,794	11,952
9.0	10,256	10,489	10,716	10,942	11,168	11,402	11,635	11,883	12,130	12,384	12,638	12,810	12,982
9.5	10,695	10,938	11,175	11,412	11,649	11,893	12,137	12,394	12,652	12,923	13,194	13,373	13,551
10.0	11,134	11,387	11,635	11,883	12,130	12,384	12,638	12,906	13,174	13,462	13,750	13,936	14,121
10.5	11,615	11,879	12,139	12,394	12,653	12,923	13,194	13,477	13,761	14,058	14,358	14,554	14,747
11.0	12,091	12,367	12,638	12,906	13,174	13,462	13,750	14,045	14,341	14,650	14,959	15,166	15,372
11.5	12,622	12,910	13,194	13,477	13,761	14,058	14,358	14,664	14,974	15,297	15,619	15,837	16,053
12.0	13,153	13,454	13,750	14,045	14,341	14,650	14,959	15,282	15,605	15,942	16,278	16,506	16,732
12.5	13,733	14,047	14,358	14,664	14,974	15,297	15,619	15,959	16,301	16,652	17,007	17,243	17,480
13.0	14,307	14,635	14,959	15,282	15,605	15,942	16,278	16,636	16,993	17,363	17,734	17,982	18,228
14.0	15,566	15,923	16,278	16,621	16,965	17,309	17,651	17,995	18,339	18,683	19,026	19,369	19,712
15.0	16,956	17,346	17,734	18,078	18,422	18,765	19,107	19,451	19,794	20,138	20,482	20,825	21,168
16.0	18,490	18,916	19,341	19,685	20,029	20,371	20,715	21,058	21,402	21,745	22,089	22,433	22,775
17.0	20,156	20,621	21,086	21,429	21,773	22,117	22,459	22,803	23,147	23,489	23,833	24,177	24,520
18.0	21,991	22,499	23,009	23,352	23,696	24,040	24,383	24,725	25,069	25,412	25,756	26,100	26,444
19.0	24,011	24,567	25,125	25,469	25,810	26,154	26,498	26,842	27,184	27,528	27,872	28,215	28,558
20.0	26,214	26,822	27,433	27,774	28,118	28,462	28,806	29,149	29,493	29,837	30,179	30,523	30,866
21.0	28,640	29,305	29,974	30,358	30,660	31,004	31,347	31,690	32,033	32,377	32,720	33,064	33,408
22.0	31,301	32,028	32,761	33,105	33,449	33,792	34,135	34,478	34,822	35,165	35,509	35,853	36,196
23.0	34,212	35,008	35,811	36,154	36,498	36,842	37,186	37,527	37,871	38,215	38,558	38,902	39,246
24.0	37,412	38,283	39,163	39,507	39,850	40,193	40,536	40,879	41,223	41,567	41,910	42,253	42,597
25.0	40,926	41,879	42,844	43,187	43,531	43,875	44,217	44,561	44,905	45,248	45,592	45,934	46,278

History: En. 59-918 by Sec. 4, Ch. 563,
L. 1977.

59-919. Allocation between wages and health insurance. (1) The dollar amounts shown in the respective matrices in 59-917 and 59-918 represent the maximum amount allocated by the state for wages and health insurance benefits, exclusive of longevity as defined in 59-920. Except as provided in subsection (2) of this section, that amount specifically allocated for health insurance benefits shall be determined by 11-1024. An employee who elects not to be covered by a state health insurance plan will receive as wages the amount shown in the appropriate matrix less the state contribution for health insurance as determined by 11-1024.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the matrices of 59-917 and 59-918 between wages and health insurance benefits, except that in no case may the health insurance allocation be less than the amounts provided in 11-1024.

History: En. 59-919 by Sec. 5, Ch. 563,
L. 1977.

59-920. Longevity allowance. In addition to the compensation determined above, each employee who has completed at least 5 years of uninterrupted state service shall receive the amount obtained by multiplying the larger of \$10 a month or 10% of the difference between the base compensation for his grade and step and the base compensation for the corresponding step in the next highest grade by the number of completed, contiguous 5-year periods of uninterrupted service he has

with the state. Service to the state may not be considered to have been interrupted by authorized leaves of absence.

History: En. 59-920 by Sec. 6, Ch. 563,
L. 1977.

59-921. Exceptions for collective bargaining. (1) The procedure established in this act for increasing compensation for state employees is in lieu of and supersedes any other such plans or systems except those plans negotiated with the blue collar crafts and teachers in accordance with provisions of Title 59, chapter 16. The total amount of compensation which may be used to implement any such plan may not exceed the total amount of funding that would be required to fund application of the matrices in 59-917 and 59-918 to the employees covered by the negotiated plan.

(2) A member of a bargaining unit may receive negotiated increases in compensation only after the bargaining unit has ratified the negotiated plan or system for the biennium. Should such negotiations and subsequent ratification process not be completed by the beginning of the biennium, retroactivity to the beginning of the biennium shall be negotiable.

History: En. 59-921 by Sec. 7, Ch. 563,
L. 1977.

59-922. Rules. The department of administration, subject to approval by the budget director, may promulgate rules not inconsistent with the provisions of this act, collective bargaining statutes or negotiated contracts, to carry out the purposes of the act.

History: En. 59-922 by Sec. 8, Ch. 563,
L. 1977.

Appropriation

Section 9 of Ch. 563, Laws 1977 read "There is appropriated to the budget director \$2,208,225 for the fiscal year ending June 30, 1978, and \$4,902,600 for the fiscal year ending June 30, 1979, from the state general fund to carry out the provisions of this act as it pertains to executive branch agencies, not including units of the university system. The budget director is authorized to increase the expenditure authority of executive branch

agencies, not including units of the university system, by \$3,581,692 for the fiscal year ending June 30, 1978, and by \$8,097,724 for the fiscal year ending June 30, 1979, from funds other than the state general funds which accrue under provisions of law to the respective agencies to carry out the provisions of this act."

Reversion

Section 10 of Ch. 563, Laws 1977 read "Appropriated funds not spent at the end of the fiscal year shall revert to the fund from which they were appropriated."

CHAPTER 10—LEAVES OF ABSENCE OF EMPLOYEES

Section

- 59-1001. Annual vacation leave.
- 59-1002. Accumulation of leave.
- 59-1003. Separation from service or transfer to other department—cash for unused vacation leave upon termination.
- 59-1005. Absence because of illness not chargeable against vacation unless approved by employee.
- 59-1007.1. Definitions.
- 59-1008. Sick leave.
- 59-1009. Observance of holiday falling on an employee's day off.
- 59-1010. Jury duty—service as witness.
- 59-1011. Mandatory leave of absence for employees holding public office—return requirements.
- 59-1012. Unemployment not charged to employer.

59-1001. Annual vacation leave. (1) Each full-time employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment. For calculating vacation leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate vacation leave credits shall be earned and credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of six (6) calendar months. Persons regularly employed nine (9) or more months each year, but whose continuous employment is interrupted by the seasonal nature of the position, shall earn vacation credits. However, such persons must be employed six (6) qualifying months before they can use the vacation credits. In order to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(2) A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

(a) having been ordered on active duty with the armed forces of the United States;

(b) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(c) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

(3) Vacation leave credits shall be earned at a yearly rate calculated in accordance with the following schedule:

Years of employment	Working days credit
1 full pay period through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

(4) Permanent part-time employees are entitled to prorated annual vacation benefits if they have regularly scheduled work assignments and normally work at least twenty (20) hours each week of the pay period and have worked the qualifying period.

(5) It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this law. Should a question arise under this paragraph, it shall be submitted to arbitration as provided in chapter 201, Title 93, R.C.M., 1947 unless there is a collective bargaining agreement applicable.

History: En. Sec. 1, Ch. 131, L. 1949; 1971; amd. Sec. 1, Ch. 360, L. 1973; amd. amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Sec. 2, Ch. 476, L. 1973; amd. Sec. 1, Ch. Ch. 350, L. 1969; amd. Sec. 1, Ch. 121, L. 62, L. 1975; amd. Sec. 1, Ch. 479, L. 1977.

Amendments

The 1971 amendment deleted "for a period of one (1) year from the date of employment" before "is entitled to" in the first sentence; substituted "shall earn annual vacation leave credit from the first full calendar month of employment" at the end of the first sentence for "shall be granted annual vacation leave with full pay"; inserted the present fourth sentence; substituted "one (1) month through" at the beginning of subdivision (a) for "one (1) year to"; substituted "eleven (11) years through" at the beginning of subdivision (b) for "ten (10) years to"; substituted "sixteen (16) years through" at the beginning of subdivision (c) for "fifteen (15) years to"; and made minor changes in phraseology.

Chapter 360, Laws of 1973, substituted "the first full pay period" for "one (1) month" in subdivision (1) (a); and added subsection (2).

Chapter 476, Laws of 1973, inserted "full-time" before "employee" near the beginning of subsection (1); deleted "who is in continuous employment and service of the state, county or city thereof" before "is entitled" in the first sentence of subsection (1); substituted "pay period of employment" at the end of the first sentence of subsection (1) for "calendar month of employment"; inserted the second and third sentences in subsection (1); substituted "vacation leave with pay" in the fourth sentence of subsection (1) for "leave with full pay"; inserted the fifth, sixth and seventh sentences in subsection (1); substituted "one (1) full pay period" near the beginning of subdivision (1) (a) for "one (1) month"; converted the vacation leave credit statements in the lettered subdivisions of subsection (1) from monthly to annual allowances; substituted "after ten (10) years" at the beginning of subdivision (1) (b) for "from

eleven (11) years"; substituted "after fifteen (15) years" at the beginning of subdivision (1) (c) for "from sixteen (16) years"; added the final paragraph of subsection (1); and made minor changes in phraseology and style.

The 1975 amendment reduced the qualification period for paid vacation from twelve months of continuous employment to six months of continuous employment; and reduced the eligibility requirement for nine-month employees from twelve qualifying months to six qualifying months.

The 1977 amendment inserted subsection (2); redesignated former subdivisions (1)(a) through (1)(d) as subsection (3); designated the former last paragraph of subsection (1) as subsection (4); redesignated former subsection (2) as subsection (5); and made minor changes in phraseology and style.

Employees

Term "employees" was used in this section in its generic sense to include all employees of state or its agencies, including nonteaching school district employees. Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 45 v. Cascade County School Dist. No. 1, — M —, 511 P 2d 339.

School District Employees

Full time nonteaching employees of county school district were entitled to vacation benefits under this section, adjusted retroactively to date of their employment subject to the two-year statute of limitations placed upon liability created by statute and reduced by vacation benefits received under contract negotiations or administrative regulations. Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 45 v. Cascade County School Dist. No. 1, — M —, 511 P 2d 339.

59-1002. Accumulation of leave. Annual vacation leave may be accumulated to a total not to exceed two (2) times the maximum number of days earned annually as of the last day of any calendar year.

History: En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969; amd. Sec. 2, Ch. 121, L. 1971; amd. Sec. 1, Ch. 148, L. 1974.

Amendments

The 1971 amendment added "as of the last day of any calendar year" at the end of the section.

The 1974 amendment substituted "two

(2) times the maximum number of days earned annually" for "thirty (30) working days."

Effective Date

Section 3 of Ch. 121, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

DECISIONS UNDER FORMER LAW

School Superintendent

Contract of school superintendent which was silent as to possible accumulation of

annual leave was interpreted according to the general thirty-day policy for all government employees under this section,

even though school superintendent was excepted from the definition of employee

under this act. *Bitney v. School District No. 44*, — M —, 535 P 2d 1273.

59-1003. Separation from service or transfer to other department—cash for unused vacation leave upon termination. An employee who terminates his employment with the state, or any county or city thereof, for reason not reflecting discredit on himself, shall be entitled upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in section 59-1001 (1) above. However, if an employee transfers between agencies of the same state, county or city jurisdiction there shall be no cash compensation paid for unused vacation leave. In such a transfer the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

History: En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969; amd. Sec. 3, Ch. 476, L. 1973.

Amendments

The 1973 amendment substituted "who terminates his employment with" for "who is separated from the service of" near the beginning of the first sentence; deleted "or any employee transferred to or employed in another division or department of the state, or any county or city thereof" following "for reason not re-

flecting discredit on himself" in the first sentence; substituted "termination" for "separation from" in the middle of the first sentence; deleted "transfer to or acceptance of new employment within the state, county, or city service" following "termination" in the middle of the first sentence; added "assuming that the employee has worked the qualifying period set forth in section 59-1001 (1) above" to the end of the first sentence; and added the second and third sentences.

59-1005. Absence because of illness not chargeable against vacation unless approved by employee. Absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969; amd. Sec. 4, Ch. 476, L. 1973.

Amendments

The 1973 amendment substituted "unused vacation leave credits" for "annual vacation leave"; and added "unless approved by the employee."

59-1007. Persons excepted from act.

School Superintendent

For the purpose of interpreting his contract, school superintendent was classified

as a school teacher under this act. *Bitney v. School District No. 44*, — M —, 535 P 2d 1273.

59-1007.1. Definitions. For the purpose of this act:

- (1) "Agency" means any legally constituted department, board or commission of state, county or city government.
- (2) "Employee" means any person employed by the state, county or city governments.
- (3) "Permanent employee" means an employee who regularly works for more than six (6) months in any twelve (12) month period.
- (4) "Part-time employee" means an employee who normally works less than forty (40) hours a week.
- (5) "Full-time employee" means an employee who normally works forty (40) hours a week.

(6) "Temporary position" means a position created for a definite period of time but not to exceed six (6) months and the position is not renewable.

(7) "Seasonal position" means a position which, although temporary in nature, regularly occurs from season to season or from year to year.

(8) "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation or personal business at the request of the employee and with the concurrence of the employer.

(9) "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or his immediate family.

(10) "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service of more than five (5) working days.

(11) "Continuous employment" means working within the same jurisdiction without a break in service of more than five (5) working days or without a continuous absence without pay of more than fifteen (15) working days.

(12) "Break in service" means that period of time an employee takes to change employment from one agency to employment in another agency of the same jurisdiction.

History: En. Sec. 1, Ch. 476, L. 1973.

Title of Act

An act to amend sections 59-1001, 59-1003, 59-1005 and 59-1008, R. C. M. 1947;

to provide laws for administering annual vacation and sick leave benefits for all employees of state, county and city governments; and to add a new section to provide for jury leave for public employees.

59-1008. Sick leave. (1) Each full-time employee of the state, or of any county or city thereof, is entitled to and shall earn sick leave credits from the first full pay period of employment. For calculating sick leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate sick leave credits shall be earned and credited at the end of each pay period. Sick leave credits shall be earned at the rate of twelve (12) working days for each year of service without restriction as to the number of working days he may accumulate.

(2) An employee may not accrue sick leave credits during a continuous leave of absence without pay, which exceeds fifteen (15) calendar days. Employees are not entitled to be paid for sick leave under the provisions of this act until they have been continuously employed for ninety (90) days. Upon completion of the qualifying period, the employee is entitled to the sick leave credits he has earned.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have a regularly scheduled work assignment, and normally work at least twenty (20) hours each week of the pay period, and have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the state or of any county or city thereof, is entitled to a lump-sum payment equal to one-fourth ($\frac{1}{4}$) of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the

basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971, and the payment therefor, shall be the responsibility of the state, or any county or city thereof, wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same state, county or city jurisdiction he shall not be entitled to a lump-sum payment. In such a transfer the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee of the state or any county or city thereof who receives a lump-sum payment pursuant to this act and who is again employed by the state or a county or city thereof shall not be credited with any sick leave for which he has previously been compensated.

(7) The department of administration of the state of Montana or the administrative office of any county or city thereof shall be responsible for the proper administration of sick leave and shall promulgate such rules and regulations as it deems necessary to achieve the uniform administration of sick leave and to prevent the abuse thereof. When promulgated these rules and regulations are effective as to all employees of the state of Montana or any county or city thereof.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this act.

History: En. 59-1008 by Sec. 1, Ch. 93, L. 1971; amd. Sec. 5, Ch. 476, L. 1973; amd. Sec. 1, Ch. 309, L. 1975.

Title of Act

An act adding new section 59-1008, R. C. M. 1947, to provide uniform sick leave benefits for public employees.

Amendments

The 1973 amendment inserted "full-time" before "employee" at the beginning of subsection (1); substituted "is entitled to and shall earn sick leave credits" in the first sentence of subsection (1) for "shall be granted sick leave with full pay"; added "from the first full pay period of employment" to the end of the first sentence of subsection (1); inserted new second and third sentences in subsection (1); converted the sick leave allowance stated in the fourth sentence of subsection (1) from a monthly to an annual allowance; inserted "continuous" before "leave of absence" in the first sentence of subsection (2); inserted "calendar" before "days" at the end of the first sentence of subsection (2); inserted

new subsections (3) and (4); renumbered subsections (3), (4), (5) and (6) as (5), (6), (7) and (8); substituted "An employee who terminates his employment" at the beginning of subsection (5) for "Upon separation from service"; substituted "July 1, 1971" in the third sentence of subsection (5) for "when this act becomes effective"; substituted "had accrued prior to July 1, 1971" at the end of the fourth sentence of subsection (5) for "has previously accrued"; added the fifth and sixth sentences to subsection (5); inserted "the administrative office" before "of any county or city" in the first sentence of subsection (7); and made numerous minor changes in phraseology.

The 1975 amendment deleted "his" near the beginning of subsection (5) after "terminates"; substituted "the accumulated sick leave" for "his accumulated sick leave" in two places in subsection (5); and substituted "at the time he terminates his employment with the state, county or city" for "at the time the sick leave credits were earned" at the end of the second sentence of subsection (5).

59-1009. Observance of holiday falling on an employee's day off. Any employee of the state of Montana, or any county or city thereof, who is scheduled for a day off on a day which is observed as a legal

holiday, except Sundays, shall be entitled to receive a day off either on the day preceding or the day following the holiday, whichever allows a day off in addition to the employee's regularly scheduled days off.

History: En. Sec. 1, Ch. 108, L. 1971. by public employees when a holiday falls on the employee's day off.

Title of Act

An act to provide for holiday observance

59-1010. Jury duty—service as witness. (1) Each employee of the state or any political subdivision thereof who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his juror time off against his annual leave he shall not be required to remit his juror fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowance paid him by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees shall be applied against the amount due the employee from his employer. However, if an employee elects to charge his witness time off against his annual leave he shall not be required to remit his witness fees to his employer. In no instance is an employee required to remit to his employer any expense or mileage allowances paid him by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

(4) The department of administration of the state of Montana or the administrative office of any city or county thereof shall issue the necessary regulations to implement this act.

History: En. Sec. 6, Ch. 476, L. 1973; amend. Sec. 1, Ch. 154, L. 1974. serve as a juror in a court or judicial proceedings without loss of cumulative benefits."

Amendments

The 1974 amendment substituted "political subdivision" in the first sentence of subsection (1) for "county or city"; and substituted the portion of subsection (1) following "under proper summons" for "shall be granted leave without pay to

Effective Date

Section 2 of Ch. 154, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

59-1011. Mandatory leave of absence for employees holding public office—return requirements. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant such employees leaves of absence, not to exceed one hundred eighty (180) days per year, while they are performing public service.

(2) Employees granted a leave shall make arrangements to return to work within ten (10) days following the completion of the service for which the leave was granted unless they are unable to do so because of illness or disabling injury certified to by a licensed physician.

History: En. 59-1011 by Sec. 1, Ch. 107, L. 1975.

Title of Act

An act requiring all employers to grant to employees who are elected or appointed to public office a leave of absence of not

more than one hundred eighty (180) days per year while performing public service; and requiring employees to make arrangements to return to work within ten (10) days following the completion of such public service.

59-1012. Unemployment not charged to employer. Any unemployment benefits paid to any person by application of this act shall not be charged against any employer under the unemployment compensation law.

History: En. 59-1012 by Sec. 2, Ch. 107, L. 1975.

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

Section

59-1102. Definitions.

59-1102.1. Referendum and certification.

59-1104. Plans for coverage of employees of political subdivisions.

59-1105. Contribution account.

59-1106. Costs of administration.

59-1108. Persons excepted from act.

59-1109. Referendum by school district.

59-1110. Eligibility of staff and teachers—payroll deductions.

59-1111. Participation of institutions of higher education.

59-1112. No effect on rights under other laws.

59-1102. Definitions. For the purposes of this act, the following definitions apply:

(1) The term “wages” means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration which, even if it were for “employment” within the meaning of the Federal Insurance Contributions Act, would not constitute “wages” within the meaning of that act.

(2) (a) The term “employment” means any service performed by an employee in the employ of the state or any political subdivision thereof for such employment, except:

(i) service which in the absence of an agreement entered into under this act would constitute “employment” as defined in the Social Security Act; or

(ii) service which under the Social Security Act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this act.

(b) Service performed by civilian employees of national guard units is specifically included within the term “employment”.

(c) Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term “employment” if and when the governor issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to 59-1102.1(5).

(3) The term “employee” includes an elective or appointive officer or employee of the state or a political subdivision thereof.

(4) The term "state agency" means the public employees' retirement board of the public employees' retirement system of the state of Montana.

(5) The term "secretary of health, education, and welfare" means the secretary of the United States department of health, education, and welfare; includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any such function.

(6) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if the instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as, but not limited to, school districts, housing authorities, etc.

(7) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant thereto, as such act has been and may from time to time be amended.

(8) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954, and as such codes may from time to time be amended.

History: En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977.

Amendments

The 1977 amendment redesignated for-

mer subdivisions (a) through (h) as subdivisions (1) through (8); substituted "59-1102.1(5)" for "59-1102.1(b)" at the end of subdivision (2)(c); and made minor changes in phraseology, punctuation and style.

59-1102.1. Referendum and certification. (1) (a) Pursuant to section 218(d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana is, for the purposes of this act, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby.

(b) Pursuant to section 218(p)(1) of the Social Security Act, the highway patrolmen's retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police reserve fund and each unit of the statewide police reserve fund of the state of Montana are, for the purposes of this act, considered separate retirement systems with respect to the state and separate retirement sys-

tems with respect to each political subdivision having positions covered thereby.

(2) With respect to employees of the state other than highway patrolmen and with respect to highway patrolmen, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon the request of the governing body of the subdivision.

(3) In either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act.

(4) The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum considers necessary and sufficient, informing the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this act.

(5) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare.

History: En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977.

Amendments

The 1974 amendment inserted subsection (b); and redesignated former subsection (b) as subsection (c).

The 1977 amendment redesignated former subsection (a) as subdivision (1)(a) and subsections (2) to (4); redesignated for-

mer subsection (b) as subdivision (1)(b); substituted "each municipal police reserve fund and each unit of the statewide police reserve fund" in subdivision (1)(b) for "the metropolitan police retirement system"; inserted "other than highway patrolmen and with respect to highway patrolmen" in subsection (2); redesignated former subsection (c) as subsection (5); and made minor changes in phraseology and punctuation.

59-1104. Plans for coverage of employees of political subdivisions. (1) Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision. A plan and any amendment thereof shall be approved by the state agency if it finds that the plan or the plan as amended is in conformity with such requirements as are provided in regulations of the state agency.

(2) No plan may be approved unless:

(a) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 59-1103;

(b) it provides that all services which constitute employment as defined in 59-1102 and are performed in the employ of the political subdivisions by

employees thereof will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(c) it specifies the sources from which the funds necessary to make the payments required by subsections (4)(a) and (5) are expected to be derived and contains reasonable assurance that the sources will be adequate for such purpose;

(d) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(e) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require and will comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports;

(f) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

(3) The state agency may not finally refuse to approve a plan submitted by a political subdivision under subsection (1) and may not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(4) (a) Each political subdivision as to which a plan has been approved under this section shall pay, at such time or times as the state agency may prescribe by regulation, contributions with respect to wages (as defined in 59-1102) in the amounts and at the rates specified in the applicable agreement entered into by the state agency under 59-1103.

(b) Each political subdivision required to make payment under subsection (4)(a) shall, in consideration of the employee's retention in or entry upon employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act and shall deduct the amount of such contributions from his wages as and when paid. Contributions so collected partially discharge the liability of the political subdivision or instrumentality under subsection (4)(a). Failure to deduct the contribution does not relieve the employee or employer of liability therefor.

(5) Delinquent payments due under subsection (4)(a) may, with interest at the rate of 6% a year, be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to the subdivision by the department, agency, or fund of the state.

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977.

Amendments

The 1977 amendment redesignated former subsection (a) as subsection (1); redesignated former subdivisions (a)(1) through (a)(6) as subdivisions (2)(a) through (2)(f); substituted "subsections (4)(a) and (5)" for "paragraph (1) of subsection (c) and by subsection (d)" in

subdivision (2)(c); redesignated former subsections (b) through (d) as subsections (3) through (5); inserted "at such time or times as the state agency may prescribe by regulation, contributions" in subdivision (4)(a); substituted "subsection (4)(a)" for "paragraph (1) of this subsection" twice in subdivision (4)(b); substituted "subsection (4)(a)" for "paragraph (1) of subsection (c)" near the beginning of subsection (5); and made minor changes in phraseology, punctuation and style.

59-1105. Contribution account. (1) There is hereby established, in place of the fund known as the contribution fund, an agency account for the social security program in the agency fund, to be known as the contribution account.

(2) The contribution account shall consist of and there shall be deposited in such account:

(a) all contributions, interest, and penalties collected under 59-1103.1 and 59-1104;

(b) all moneys appropriated thereto by the legislature of the state of Montana;

(c) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account; and

(d) all other moneys received for the account from any other source.

(3) All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. The board of investments shall invest the account in investments of the same character as are permitted by 79-310 for the investment of moneys in the long-term investment fund. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in subsection (4) of this section to the earmarked revenue fund or funds of the state agency, to be used by it either to defray the costs of administering the state agency or for distribution pro rata to the contributing state departments, political subdivisions, school districts, and instrumentalities, as it may determine. It may perform any and all acts, whether or not specifically designated, which are necessary to the administration of the account and are consistent with the provisions of this act.

(4) The contribution account shall be used and administered exclusively for the purpose of this act. Subject to the provisions of subsection (3) of this section, withdrawals from the account shall be made for, and solely for, payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under 59-1103, payment of refunds provided for in 59-1103.1, and refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(5) (a) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under 59-1103 and the Social Security Act.

(b) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(6) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the department of administration in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977.

Amendments

The 1977 amendment redesignated former subsection (a) as subsection (1); substituted "an agency account for the social security program in the agency fund, to be known as the contribution account" for "a contribution account in the agency fund" at the end of subsection (1); redesignated former subdivisions (a)(1) through (a)(3) as subdivisions (2)(a)

through (2)(c); inserted the subsection (3) designation; substituted "79-310" for "section 79-1202 of this code" in the third sentence of subsection (3); substituted "subsection (4)" for "subdivision (b)" near the beginning of the fourth sentence of subsection (3); redesignated former subsections (b) and (c) as subsections (4) and (5)(a); substituted "subsection (3)" for "subdivision (a)" near the beginning of subsection (4); substituted "59-1103" for "section 59-1102.1" near the end of subdivision (5)(a); redesignated former subsection (d) as subdivision (5)(b); redesignated former subsection (e) as subsection (6); and made minor changes in phraseology, punctuation and style.

59-1106. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the earmarked revenue fund, retirement division account. So much of the costs as are not defrayed by interest and income earned upon the contribution account, which has been credited to the earmarked revenue fund, retirement division account, as provided in 59-1105, shall be paid to the state agency for deposit to the earmarked revenue fund, retirement division account, by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977.

Amendments

The 1977 amendment substituted "re-

tirement division account" for "social security division account" throughout the section; substituted "contribution account" for "contribution fund" near the beginning of the second sentence; and made minor changes in phraseology and punctuation.

59-1108. Persons excepted from act. This act shall not apply to, and there shall be excluded from the operation thereof, all employees of the state and of the political subdivisions thereof operating under the provisions of any retirement plan for firefighters.

History: En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974.

Amendments

The 1974 amendment deleted "policemen or highway patrolmen" from the end of the section.

59-1109. Referendum by school district. A school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum, pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicates that the staff and teachers approve, then the board of trustees shall certify to the department of administration that the conditions for coverage by social security, required by section 218 of the Social Security Act, have been complied with.

History: En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

The 1977 amendment substituted "department of administration" for "state department of revenue (or such other agency as may be by legislation designated to administer such program and enter into agreements for extensions of social security coverage)" in the second sentence; and made minor changes in phraseology and punctuation.

59-1110. Eligibility of staff and teachers—payroll deductions. (1) Upon the certification provided for in 59-1109, the staff and teachers of the district are eligible for coverage under the provisions of the Federal Social Security Act.

(2) The fiscal officer of the district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, from the staff and teachers by payroll deduction and from the school district as employer. The funds collected shall be deposited with the department of administration and held in the contribution account as provided by 59-1101 through 59-1108.

(3) For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social Security Act, are the first obligation against any state funds received for school support by any school district, high school district, or county high school and shall be paid therefrom before any other expenditure.

History: En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first sentence.

The 1977 amendment inserted the subsection designations; inserted "provided for in 59-1109" in subsection (1); substituted "The funds collected" for "funds

and accounts" at the beginning of the second sentence of subsection (2); substituted "department of administration" for "state department of revenue, or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state" in the second sentence of subsection (2); substituted "contribution account" for "contributions fund" near the end of the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

59-1111. Participation of institutions of higher education. (1) For the purposes of this section, the teachers' retirement system of the state

of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

(2) On request of the president of an institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act.

(3) If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health, education, and welfare that the conditions set forth in section 218 of the Social Security Act have been complied with in respect to the retirement system voting in the referendum.

(4) Upon certification, the governor shall designate an official to enter into an agreement, or a modification or supplement to an existing agreement or both a modification and a supplement, with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act, to secure coverage thereunder for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

(5) The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows:

(a) from the teachers in the retirement system of that institution, by payroll deductions; and

(b) from the state, from any appropriations to the institution involved for salaries or other purposes.

(6) In the absence of a specific provision in the appropriations for or budget of an institution for such contributions, the board of regents of higher education shall designate the funds from which the required contributions will be made and the budgetary items to which they will be allocated.

(7) In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to the amended law or the superseding law.

History: En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977.

for "state board of education" in subsection (6); redesignated subsection (f) as subsection (7); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment redesignated subsections (a) through (d) as subsections (1) through (4); redesignated subsection (e) as subsections (5) and (6); substituted "board of regents of higher education"

Cross-References

Board of regents to exercise powers and duties, sec. 75-5617 (2).

59-1112. No effect on rights under other laws. Nothing in this act may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent

to permit teachers and staff in any district or institution of higher education, so electing, to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

History: En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977.

for "shall" after "Nothing in this act" at the beginning of the first sentence; substituted "may" for "shall" in the fourth sentence; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "may"

CHAPTER 13—FACSIMILE SIGNATURES OF PUBLIC OFFICIALS

59-1301. Definitions.

Facsimile Signatures of Public Officials Act

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted

the "Uniform Facsimile Signatures of Public Officials Act": Colorado, Florida, Kansas, North Dakota, Rhode Island and Washington.

CHAPTER 14—MONTANA SALARY COMMISSION

Section

59-1401. Creation of commission—composition—terms—vacancies.

59-1402. Meetings of commission—quorum—compensation.

59-1403. Commission studies.

59-1404. Commission meetings and recommendations—submission.

59-1401. Creation of commission—composition—terms—vacancies. (1)

There is created a Montana salary commission. The commission is composed of eight (8) members, none of whom may be public officers, either elected or appointed. The commission shall be appointed in the following manner and in the following chronological order:

(a) First, the governor shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(b) Next, the supreme court shall appoint one (1) member from each of the two (2) major political parties, equally divided between the United States congressional districts;

(c) Next, the majority floor leader of the senate shall appoint one (1) member from his political party. The minority leader of the senate shall then appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the presiding officer;

(d) Next, the presiding speaker of the house of representatives shall appoint one (1) member from his political party. Lastly, the minority leader in the house of representatives shall appoint one (1) member from his political party not from the same United States congressional district as the member appointed by the speaker.

All appointments shall be made not later than the 60th legislative day.

(2) Commission members shall serve a term of four (4) years. In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 1, Ch. 66, L. 1973; amd. Sec. 1, Ch. 41, L. 1974.

Title of Act

An act to create the Montana salary commission, to comply with article XIII, section 3 of the 1972 Montana constitution and providing an effective date.

Amendments

The 1974 amendment deleted from sub-

division (2), after the first sentence, a proviso reading "provided that one-half ($\frac{1}{2}$) of the membership of the first salary commission shall serve a term of two (2) years, and the committee members shall draw lots at their first meeting to determine which of their number will serve two (2) year terms"; and made a minor change in punctuation.

59-1402. Meetings of commission—quorum—compensation. (1) The commission shall hold at least two meetings before submitting a report to the legislature as provided in 59-1404.

(2) All meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least 20 days before the day scheduled for the meeting.

(3) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(4) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their travel expenses incurred, as provided for in 59-538, 59-539, and 59-801, as amended, and \$25 per day while attending meetings of the commission.

(5) The commission shall choose one of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman.

History: En. Sec. 2, Ch. 66, L. 1973; amd. Sec. 2, Ch. 41, L. 1974; amd. Sec. 3, Ch. 453, L. 1977.

Amendments

The 1974 amendment deleted the former subdivision (1) reading "The initial meeting of the commission shall be held on the second Tuesday of July in the year in which the commission is created"; renumbered the subdivisions accordingly; substituted "submitting a report to the legislative assembly as provided in section 59-1404" at the end of the present subdivi-

sion (1) for "any legislative session which may consider appropriations for compensation including salaries and expenses of the judiciary and elective members of the legislative and executive branches"; and deleted "subsequent" before "meetings" at the beginning of subdivision (2).

The 1977 amendment substituted "travel expenses incurred, as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (4) for "actual and necessary expenses incurred"; and made minor changes in phraseology and style.

59-1403. Commission studies. The commission may request comprehensive reports or studies from any state agency concerning compensation of the judiciary and elective members of the legislative and executive branches of government. Any state agency from which such a report is requested shall furnish the same within a reasonable time as determined by the chairman and the head of the agency concerned. The report or study requested, in addition to such other matters as the commission may request, or the agency preparing the report may determine appropriate, shall contain a review and comparison of the levels and form of compen-

sation paid to the judiciary and elective members of the legislative and executive branches with the levels and forms of compensation paid in other states similarly situated.

History: En. Sec. 3, Ch. 66, L. 1973.

59-1404. Commission meetings and recommendations—submission. The commission shall hold its meetings in the year prior to each first regular session of the biennium. On or before November 15 prior to each first regular session of the biennium, the commission shall submit its formal written recommendations for the level and form of compensation to be paid to the judiciary and the elective members of the legislative and executive branches to each member of the legislative assembly, to each member of the judiciary, and each elective member of the executive branch, for review and consideration. A commission member who does not concur in the proposed recommendation may submit his written objections thereto with the formal recommendations submitted by the commission.

History: En. Sec. 4, Ch. 66, L. 1973; amd. Sec. 3, Ch. 41, L. 1974.

compensation of members of the judiciary and elective members of the legislative and executive branches."

Amendments

The 1974 amendment inserted the first sentence; and substituted "each first regular session of the biennium" in the second sentence for "the year in which the legislature may consider appropriations for

Effective Date

Section 5 of Ch. 66, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

CHAPTER 15—STATE EMPLOYEE GROUP INSURANCE

Section

59-1501. Definitions.

59-1502. Negotiation and contracting by department of administration.

59-1503. Advisory council—selection of representatives—meetings.

59-1504. Combining existing employee groups.

59-1505. Approval of insurance by component group—independent negotiation in event of disapproval.

59-1506. Rules.

59-1507. Costs of administration and negotiation.

59-1501. Definitions. As used in this act:

(1) "Department" means the department of administration of the state of Montana provided for in chapter 2 of Title 82A.

(2) "Employee" means an employee of the state of Montana, specifically including a member or employee of the legislative branch of state government, who is eligible for insurance coverage pursuant to section 11-1024. The term "employee" does not include employees of counties, cities, towns and school districts of the state of Montana.

History: En. Sec. 1, Ch. 438, L. 1973; amd. Sec. 1, Ch. 347, L. 1975.

the legislative branch of state government, who is" in the first sentence of subdivision (2); and deleted "and a member, officer, or employee of the legislative branch of state government" from the end of the same sentence.

Title of Act

An act to provide for combining all state employees into one or more groups for purposes of negotiating and contracting for group insurance.

Amendments

The 1975 amendment inserted "specifically including a member or employee of

Effective Date

Section 2 of Ch. 347, Laws 1975 provided the act should be effective from and after its passage and approval. Approved April 9, 1975.

59-1502. Negotiation and contracting by department of administration. The department of administration shall negotiate and contract for all contracts of group insurance and health service corporation plans issued to all officers and employees of all departments of the executive and legislative branches of the government of the state of Montana.

History: En. Sec. 2, Ch. 438, L. 1973.

59-1503. Advisory council—selection of representatives—meetings. (1) Before the department begins negotiations for a group insurance policy, the director of the department shall create an advisory council to advise him on matters pertaining to the negotiating and contracting. The advisory council shall be created under section 82A-110, but the members shall be selected in accordance with subsection (2) of this section.

(2) The officers and employees of each principal department and constitutional office in the executive branch of state government and the members, officers, and employees of the legislative branch of state government shall select, in accordance with the rules adopted under section 6 [59-1506] of this act, a representative to serve on the advisory council and to represent the interests of the officers and employees.

(3) The advisory council shall meet quarterly to review the existing policy, to report and review claim problems and provide advice to the department for future negotiations.

History: En. Sec. 3, Ch. 438, L. 1973.

59-1504. Combining existing employee groups. The department may combine existing employee groups in one or more departments of the executive branch of the government of the state of Montana into a single group and contract on behalf of the combined group. The department may also combine all employees of the executive and legislative branches of the government of the state of Montana into one group.

History: En. Sec. 4, Ch. 438, L. 1973.

59-1505. Approval of insurance by component group—-independent negotiation in event of disapproval. Two-thirds (2/3) of the members of any existing component employee group, which is part of the combined group on whose behalf the department has contracted for group insurance, must approve the policy in order for it to be effective as to that component group. When the policy is approved, the employer contribution provided for in section 11-1024 shall then be paid to the insurer issuing the approved policy. The component employee group shall retain the power to negotiate and contract for group insurance and health service corporation plans if such component group does not approve the policy negotiated by the department.

History: En. Sec. 5, Ch. 438, L. 1973.

59-1506. Rules. The department is empowered to promulgate such rules as are required to carry out the purposes of this act.

History: En. Sec. 6, Ch. 438, L. 1973.

59-1507. Costs of administration and negotiation. The department's cost of negotiating and administering group insurance policies pursuant

to this act are to be included as part of the premium paid and returned to the department by each insurer from the premiums it receives. All department costs of negotiating and administering group insurance policies are subject to the approval of the advisory council.

History: En. Sec. 7, Ch. 438, L. 1973.

CHAPTER 16—COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Section

- 59-1601. Policy.
- 59-1602. Definitions.
- 59-1603. Employees' right to join or form labor organization and engage in collective bargaining activities.
- 59-1604. Duty to bargain collectively—good faith.
- 59-1605. Unfair labor practices of employer or labor organization.
- 59-1606. Petition on representation matters—hearing—notice—election.
- 59-1607. Remedies for unfair labor practice—hearing—procedure.
- 59-1608. Petition for enforcement of board order—jurisdiction of district court—procedure—finding by board—review.
- 59-1609. Representative of public employer.
- 59-1610. Execution of agreement—arbitration procedure—effect of agreement.
- 59-1611. Counsel for public parties to litigation.
- 59-1612. Dues deducted from employee's pay.
- 59-1613. Subpoena powers of board—oaths—refusal to obey—rules.
- 59-1614. Mediation of disputes—fact-finding proceedings—arbitration.
- 59-1614.1. Training of fact finders and arbitrators.
- 59-1615. Existing collective bargaining agreements not affected.
- 59-1616. Administrative Procedure Act applied.
- 59-1617. Negotiable items for school districts.

59-1601. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973.

Title of Act

An act granting public employers and public employees the right to bargain collectively; providing that the board of personnel appeals may designate labor

organizations to be exclusive representative of employees in certain units; and may also call elections by employees for the same purpose; providing the board of personnel appeals shall establish remedies for unfair labor practices; and providing procedures for carrying out the act.

59-1602. Definitions. When used in this act: (1) "public employer" means the state of Montana or any political subdivision thereof, including but not limited to, any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees, when the board of regents is the public employer defined in this section, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written con-

tract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

(2) "public employee" means a person employed by a public employer in any capacity, except elected officials, persons directly appointed by the governor, supervisory employees and management officials (as defined in subsection[s] (3) and (4) below) or members or any state board or commission who serve the state intermittently, school district clerks and school administrators, and registered professional nurses performing service for health care facilities, professional engineers and engineers in training, and includes any individual whose work has ceased as a consequence of, or in connection with, any unfair labor practice or concerted employee action;

(3) "supervisory employee" means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(4) "management officials" means representatives of management having authority to act for the agency on any matters relating to the implementation of agency policy;

(5) "labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment;

(6) "exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer;

(7) "board" means the board of personnel appeals provided for in section 82A-1014;

(8) "person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(9) "unfair labor practice" means any unfair labor practice listed in section 59-1605;

(10) "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand the proximate relation of employer and employee;

(11) "appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

History: En. Sec. 2, Ch. 441, L. 1973; Compiler's Notes
amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, This section was amended twice in 1975,
Ch. 384, L. 1975. once by Ch. 117 and once by Ch. 384.

Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 117, Laws of 1975, deleted "professional instructors, teachers" before "school district clerks" in subdivision (2).

Chapter 384, Laws of 1975, added the language relating to student representatives in subdivision (1) which begins: "when the board of regents is the public employer,"

"Public Employer"

The phrase "public employer" as used in subsection (2) should be broadly construed, and in doubtful cases its applicability should be determined by underlying economic facts rather than by reference to pre-existing technical and exclusive legal classifications. Local 2390 of

American Federation of State, County, Municipal Employees, A.F.L.-C.I.O. v. City of Billings, — M —, 555 P 2d 507.

Public Library Employees

Notwithstanding the fact that under the Library Systems Act, 44-212 et seq., the library board had certain supervisory powers, including the right (under 44-223) to "employ and discharge such other persons as may be necessary in the administration of the affairs of the library," the city by which the library was organized, rather than the board, was the employer of library personnel for purposes of this act, and a librarian discharged in contravention of the collective bargaining agreement between the city and the municipal employees' union, of which she was a member, was entitled to the remedies provided in that agreement. Local 2390 of American Federation of State, County, Municipal Employees, A.F.L.-C.I.O. v. City of Billings, — M —, 555 P 2d 507.

59-1603. Employees' right to join or form labor organization and engage in collective bargaining activities. (1) Public employees shall have, and shall be protected in the exercise of, the right of self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion.

(2) Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as but not limited to:

- (a) direct employees;
- (b) hire, promote, transfer, assign, and retain employees;
- (c) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
- (d) maintain the efficiency of government operations;
- (e) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (f) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (g) establish the methods and processes by which work is performed.

(3) Labor organizations designated in accordance with the provisions of this act are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

(4) Certification as an exclusive representative shall be extended or continued as the case may be only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as: provisions are made for democratic organization and procedures; elections are conducted pursuant to adequate standards and safeguards; controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and requirements exist for maintenance of sound accounting and fiscal controls including annual audits.

(5) No public employee who is a member of a bona fide religious sect, or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment, if such public employee pays, in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments, to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees or assessments under the applicable collective bargaining agreement.

A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this subsection shall make written application to the chairman of the board of personnel appeals. Within ten days of the date of receipt of such application, the chairman shall appoint a committee of three (3) consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question and a member of the public at large, who shall be the chairman. The committee shall, within ten (10) days of the date of its appointment, meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within three (3) days of the meeting date and a copy thereof shall be forthwith mailed to such public employee, labor organization and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974.

cludes strikes. State, Department of Highways v. Public Employees Craft Council, — M —, 529 P 2d 785.

Amendments

The 1974 amendment added subsection (5).

Concerted Activities

The phrase "concerted activities" in-

Right to Strike

Employees under Montana's Collective Bargaining Act are not prohibited from striking. If the legislature had intended to limit their right to strike, it could have

so expressly provided, as it has provided of Highways v. Public Employees Craft
in other occupations. State, Department Council, — M —, 529 P 2d 785.

59-1604. Duty to bargain collectively—good faith. The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (3) of section 5 [59-1605] of this act.

History: En. Sec. 4, Ch. 441, L. 1973.

DECISIONS UNDER FORMER LAW

Good Faith Effort

The negotiation of a master agreement was not a condition precedent to the issuance of individual teacher contracts, and if there had been a good faith effort to reach agreement, injunction would not lie to prevent school board from issuing individual teacher contracts. State ex rel. Billings Education Assn. v. District Court, — M —, 531 P 2d 685.

59-1605. Unfair labor practices of employer or labor organization. (1) It is an unfair labor practice for a public employer to:

(a) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 59-1603 of this act;

(b) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under section 59-1613 (4), an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(c) discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; however, nothing in this act or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require that an employee who is not or does not become a union member shall be required as a condition of employment to have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(d) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this act;

(e) refuse to bargain collectively in good faith with an exclusive representative.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right guaranteed in subsection (1) of section 59-1603 of this act, or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(b) refuse to bargain collectively in good faith with a public employer, if it has been designated as the exclusive representative of employees;

(c) use agency shop fees for contributions to political candidates or parties at state or local levels.

(3) For the purpose of this act, to bargain collectively is the performance of the mutual obligation of the public employer, or his designated representatives, and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(4) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget, or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

(5) This act does not limit the authority of the legislature, any political subdivision or the governing body, relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 36 and once by Ch. 97. It was also purported to be amended by Ch. 384, but that chapter made no change in the language. None of the amendatory acts mentioned the others. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by Ch. 36 and Ch. 97.

Amendments

Chapter 36, Laws of 1975, substituted "section 59-1613(4)" for "section 3[59-

1603]"; and substituted "section 59-1613(4)" for "section 12(3)" in subsection (1).

Chapter 97, Laws of 1975, substituted "section 59-1603" for "section 3[59-1603]" in subsection (2); inserted subsection (4); and redesignated former subsection (4) as (5).

Chapter 384, Laws of 1975, made no change in the section.

Effective Dates

Section 2 of Ch. 36, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 7, 1975.

Section 3 of Ch. 384, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 10, 1975.

59-1606. Petition on representation matters — hearing — notice — election. (1) Whenever in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that thirty per cent (30%) of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative, or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations has presented to it a claim to be recognized as the exclusive representative in an appropriate unit, the board or an agent of the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice. In this hearing the board is not bound by common law and statutory rules of evidence. If the board or an agent of the board finds that there is a question of representation, it shall direct an election by secret ballot to determine whether, and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof. Only those labor organizations which have been designated by more than ten per cent (10%) of the employees in the unit found to be appropriate shall be placed on the ballot. Nothing in this section prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

(2) In order to assure employees the fullest freedom in exercising the rights guaranteed by this act, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining, and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which, in the preceding twelve (12) month period, a valid election has been held. The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election. Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted; the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; ~~amended~~ Effective Date
amd. Sec. 1, Ch. 136, L. 1975.

Amendments

The 1975 amendment inserted "In this hearing the board is not bound by common law and statutory rules of evidence" in subdivision (1)(b).

Section 2 of Ch. 136, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 25, 1975.

59-1607. Remedies for unfair labor practice—hearing—procedure. Violations of the provisions of section 5 [59-1605] of this act are unfair labor practices remediable by the board in the following manner:

(1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, shall issue and

cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent, at a time and place therein fixed, not less than five (5) working days after the date of service. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby. The person upon whom the charge is served shall file an answer to the complaint. The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony. In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(2) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter in its discretion the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No notice of hearing shall be issued based upon any unfair labor practice more than six (6) months before the filing of the charge with the board, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the six (6) month period shall be computed from the day of his discharge. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if it is found that the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner, the member, or the examiner as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within twenty (20) days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board.

(3) Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973.

59-1608. Petition for enforcement of board order—jurisdiction of district court—procedure—finding by board—review. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order, and shall file in the district court, at its own expense, the record in the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least twenty (20) days before the date set for hearing. After the hearing the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been raised before the board shall be considered by the court, unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(2) The commencement of proceedings under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973.

59-1608.1, 59-1608.2. Repealed.

Repeal

Sections 59-1608.1, 59-1608.2 (Secs. 1, 2, Ch. 313, L. 1974), relating to collective bargaining in institutions of higher learn-

ing, and professional instructors and teachers as public employees, were repealed by Sec. 3, Ch. 117, Laws of 1975.

59-1609. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education (whether elected or appointed) or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975.

Amendments

The 1974 amendment inserted "or commissioner of higher education."

The 1975 amendment inserted "the governing body of a" before "political subdivision"; deleted "or chairman of the county commissioners" after "political subdivision"; and made minor changes in phraseology and style.

59-1610. Execution of agreement — arbitration procedure — effect of agreement. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this act and signed by the chief executive officer of the state or political subdivision or commissioner of higher education, or his representative. A publication of the agreement is not required to make it effective. The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this act is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: En. Sec. 10, Ch. 441, L. 1973; **Amendments**
amd. Sec. 4, Ch. 313, L. 1974.

The 1974 amendment inserted "or commissioner of higher education" near the end of the first sentence of subsection (3).

59-1611. Counsel for public parties to litigation. In any action brought under the provisions of this act in the courts of this state the public employer shall be represented by the attorney general or attorney of subdivision, and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973.

59-1612. Dues deducted from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973.

59-1613. Subpoena powers of board—oaths—refusal to obey—rules.

(1) To accomplish the objectives and to carry out the duties prescribed by this act, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place, or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

(3) Any subpoena, notice of hearing or other process or notice of the board issued under the provisions of this act shall be served as provided by the rules of civil procedure.

(4) The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this act.

History: En. Sec. 13, Ch. 441, L. 1973.

59-1614. Mediation of disputes—fact-finding proceedings—arbitration.

(1) If after a reasonable period of negotiation over the terms of an agreement, or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

(2) If upon expiration of an existing collective bargaining agreement, or thirty (30) days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate fact-finding.

(3) Within three (3) days of receipt of such petition the board shall submit to the parties a list of five (5) qualified, disinterested persons from which list the parties shall alternate in striking two (2) names, and the remaining person shall be designated fact finder. This process shall be completed within five (5) days of receipt of the list. The parties shall notify the board of the designated fact finder.

(4) If no request for fact-finding is made by either party before the expiration of the agreement, or thirty (30) days following certification or recognition of an exclusive representative, the board may initiate fact-finding as provided for in (3) above.

(5) The fact finder shall immediately establish dates and place of hearings. Upon request of either party of the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, but no later than twenty (20) days from the day of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public five (5) days after it is submitted to the parties. If the dispute is not resolved fifteen (15) days after the report is submitted to the parties, the report shall be made public.

(6) The public employer and the exclusive representative shall be the only proper parties to fact-finding proceedings.

(7) The cost of fact-finding proceedings shall be equally borne by the board and the parties concerned.

(8) Nothing in this section prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

(9) Nothing in this section prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached the arbitration shall supersede the fact-finding procedures set forth in this section. An agreement to

arbitrate, and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this act for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975.

Amendments

The 1975 amendment reduced the number of people required in the first sentence of subsection (3) from seven to five; and reduced the number of names to be stricken from three to two.

Separability Clause

Section 15 of Ch. 441, Laws 1973 read "If any provision of this act or the ap-

plication of such provision to any person or circumstance is held invalid, the remainder of this act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

Effective Date

Section 2 of Ch. 18, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved February 21, 1975.

59-1614.1. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under title 59, chapter 16 until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977.

Title of Act

An act to provide for the training of fact finders and arbitrators.

59-1615. Existing collective bargaining agreements not affected. Nothing in this act shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this act.

History: En. Sec. 16, Ch. 441, L. 1973.

59-1616. Administrative Procedure Act applied. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 17, Ch. 441, L. 1973.

59-1617. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in section 59-1605 (3).

History: En. 59-1617 by Sec. 2, Ch. 117, L. 1975.

Title of Act

An act amending section 59-1602, R. C. M. 1947, to include professional instructors, teachers, and paraprofessional instructors employed by school boards and districts as public employees under the Public Employees Collective Bargaining

Act; and repealing sections 59-1608.1, 59-1608.2, and 75-6115 through 75-6128, R. C. M. 1947.

Repealing Clause

Section 3 of Ch. 117, Laws 1975 read "Sections 59-1608.1, 59-1608.2, and 75-6115 through 75-6128, R. C. M. 1947, are repealed."

CHAPTER 17—CODE OF ETHICS

Section

59-1701. Statement of purpose.

59-1702. Definitions.

- 59-1703. Public trust.
- 59-1704. Rules of conduct for all public officers, legislators, and employees.
- 59-1705. Rules of conduct for legislators.
- 59-1706. Rules of conduct for state officers and state employees.
- 59-1707. Rules of conduct for local government officers and employees.
- 59-1708. Ethical principles for legislators.
- 59-1709. Ethical principles for public officers and employees.
- 59-1710. Voluntary disclosure.
- 59-1711. Powers of the secretary of state.

59-1701. Statement of purpose. The purpose of this act is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government, and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this act recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

History: En. 59-1701 by Sec. 1, Ch. 569, L. 1977.

Title of Act

An act implementing article XIII, section 4, of the 1972 Montana Constitution

to provide a code of ethics prohibiting conflict between public duty and private interest for legislators and all state and local officers and employees except members of the judiciary.

59-1702. Definitions. As used in this act the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof, or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

- (a) an ownership interest in a business;
- (b) a creditor interest in an insolvent business;
- (c) an employment or prospective employment for which negotiations have begun;
- (d) an ownership interest in real or personal property;
- (e) a loan or other debtor interest; or
- (f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(6) "Public officer" includes any state officer except a legislator or member of the judiciary or any elected officer of any subdivision of the state.

(7) "State agency" includes the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government; except the courts.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 82A-103.

History: En. 59-1702 by Sec. 2, Ch. 569,
L. 1977.

59-1703. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property is liable to a beneficiary under 86-310 and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty.

History: En. 59-1703 by Sec. 3, Ch. 569,
L. 1977.

59-1704. Rules of conduct for all public officers, legislators, and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift includes, without limitation, a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

History: En. 59-1704 by Sec. 4, Ch. 569,
L. 1977.

59-1705. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached his fiduciary duty. A legislator may not:

(1) accept a fee, contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for himself or solicit a contract for his services by the use of his office.

History: En. 59-1705 by Sec. 5, Ch. 569,
L. 1977.

59-1706. Rules of conduct for state officers and state employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or a state employee may not:

(a) use state time, facilities, or equipment for his private business purposes;

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from his agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any state agency; or

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A department head or a member of a quasi-judicial or rule-making board may perform an official act notwithstanding subsection (2)(e) if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 59-1710.

(4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he is also a full-time state employee.

History: En. 59-1706 by Sec. 6, Ch. 569,
L. 1977.

59-1707. Rules of conduct for local government officers and employees.

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 59-1710.

History: En. 59-1707 by Sec. 7, Ch. 569,
L. 1977.

59-1708. Ethical principles for legislators. (1) The principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office.

(2) When a legislator must take official action on a legislative matter as to which he has a conflict created by a personal or financial interest which would be directly and substantially affected by the legislative matter, he should consider disclosing or eliminating the interest creating the conflict or abstaining from the official action. In making his decision, he should further consider:

(a) whether the conflict impedes his independence of judgment;

(b) the effect of his participation on public confidence in the integrity of the legislature; and

(c) whether his participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) If a legislator elects to disclose the interest creating the conflict, he shall do so as provided in the joint rules of the legislature.

History: En. 59-1708 by Sec. 8, Ch. 569,
L. 1977.

59-1709. Ethical principles for public officers and employees. (1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by his agency.

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employ-

ment. These matters are rules, other than rules of general application which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

History: En. 59-1709 by Sec. 9, Ch. 569,
L. 1977.

59-1710. Voluntary disclosure. A public officer or employee may, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

History: En. 59-1710 by Sec. 10, Ch.
569, L. 1977.

59-1711. Powers of the secretary of state. The secretary of state may:

(1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(2) keep and permit reasonable public access to voluntary disclosure statements;

(3) make rules for the conduct of his affairs under this chapter.

History: En. 59-1711 by Sec. 11, Ch.
569, L. 1977.

TITLE 60—OIL AND GAS

Chapter

1. Conservation of oil and gas, 60-126 to 60-136, 60-140 to 60-145, 60-148, 60-149.
2. Petroleum products—standards—regulation of manufacture and distribution, 60-234 to 60-245.
3. State manufacture and sale of petroleum products declared public purpose, Repealed—Section 103, Chapter 326, Laws of 1974.
6. Interstate compact for conservation of oil and gas authorized, 60-606.
8. Underground gas storage reservoirs, 60-801 to 60-805.
9. Abandoned oil and gas wells, 60-901.

CHAPTER 1—CONSERVATION OF OIL AND GAS

Section

- 60-124. [Transferred.]
- 60-126. Definitions.
- 60-127. Powers and duties of board.
- 60-127.1. Waste of oil and gas prohibited.
- 60-128. Notice of intention to drill.
- 60-129. Well spacing units—orders.
- 60-130. Pooling of interest within spacing unit—voluntary or on order of board after hearing—contents of order.
- 60-131. Agreements for development and operation of pool—not in violation of state antitrust laws when approved by board.
- 60-131.1. Operation of pool as unit—board to hold hearing—notice.
- 60-131.2. Board order—criteria.
- 60-131.3. Terms and conditions of order—requirements.
- 60-131.4. Plan for unit operations—approval by those paying costs required—conditions for approval.
- 60-131.5. Amendment of board order—conditions.
- 60-131.6. Units established by previous order may be included—manner of inclusion.
- 60-131.8. Presumptions—compliance with board order constitutes fulfillment of lease or contract obligations.
- 60-131.9. Property rights—operator's lien—perfection of lien.
- 60-131.10. Contract relating to tract not terminated by board order.
- 60-131.11. Title to oil and gas rights not affected by board order—allocation of property.
- 60-131.12. Trade not restrained by unit operations.
- 60-132. Administrative Procedure Act—orders—notice.
- 60-133. Subpoena power of board—chapter does not abrogate civil actions—enforcement of chapter when board fails to enjoin violations.
- 60-134. Rehearing.
- 60-135. Court review of order of board by suit for injunction—trial de novo—temporary restraining order, when allowed, bond—appeals.
- 60-136. Enjoining violations of chapter.
- 60-140. Lands subject to act.
- 60-141. Co-operation with other governmental units and agencies.
- 60-142. Penalties.
- 60-143. Chapter does not constitute oil or gas wells as public utilities.
- 60-144. Owners shall make available to board cores and cuttings.
- 60-145. Privilege and license tax—quarterly statements—penalties—drilling permit fees—oil and gas conservation moneys.
- 60-148. Availability of facilities to bureau.
- 60-149. Department to inventory abandoned wells and seismic operations; reclamation procedures.

60-124. [Transferred.]

Compiler's Notes

Section 54, Ch. 253, Laws of 1974 re-numbered this section as sec. 60-127.1.

60-125. Repealed.**Repeal**

Section 60-125 (Sec. 2, Ch. 238, L. 1953; Sec. 1, Ch. 11, L. 1955; Sec. 1, Ch. 196, L. 1969; Sec. 24, Ch. 100, L. 1973), relat-

ing to creation and membership of the oil and gas conservation commission, was repealed by Sec. 208, Ch. 253, Laws of 1974.

60-126. Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Waste" means: (1) physical waste, as that term is generally understood in the oil and gas industry; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the location, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and, (4) the inefficient storing of oil or gas. The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.

(2) "Board" means the board of oil and gas conservation provided for in section 82A-1508.

(3) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(4) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(5) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (4) of this section.

(6) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(7) "Field" means the general area underlaid by 1 or more pools.

(8) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

Nothing herein contained shall be construed to conflict with subsection (4) of section 81-1702, granting the state board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others.

(9) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(10) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(11) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

History: En. Sec. 3, Ch. 238, L. 1953; amd. Sec. 55, Ch. 253, L. 1974; amd. Sec. 1, Ch. 336, L. 1977.

Amendments

The 1974 amendment substituted "board" at the end of subdivision (1) and the beginning of subdivision (2) for "commission"; substituted "board of oil and gas conservation provided for in section 82A-1508" in subdivision (2) for "oil and gas conservation commission of Montana"; deleted "department" in subdivision (3) after "includes any"; deleted "the masculine gender, in referring to a person, includes

the feminine and the neuter genders" at the end of subdivision (3); added "in subsection (4) of this section" to the end of subdivision (5); substituted "chapter" at the end of subdivision (6) for "act"; deleted a former last definition reading "The word 'and' includes the word 'or' and the use of the word 'or' includes the word 'and.' The use of the plural includes the singular and the use of the singular includes the plural"; added subdivision (10); and made minor changes in style, punctuation and phraseology.

The 1977 amendment added subdivision (11); and made a minor change in style.

60-127. Powers and duties of board. (1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under section 82A-108, the board shall:

(a) Require: (i) identification of ownership of oil or gas wells, producing properties and tanks; (ii) the making and filing of acceptable well logs, including bottom-hole temperatures, to facilitate the discovery of potential geothermal energy sources, reports on well locations, and the filing of directional surveys, if made, however, logs of exploratory or wildcat wells need not be filed for a period of six (6) months following completion of those wells; (iii) the drilling, casing, producing and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires, and the pollution of fresh water supplies by oil, gas, salt, or brackish water; (iv) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized, and necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration; (v) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well; (vi) proper gauging or other measuring of oil and gas produced and saved

to determine the quantity and quality thereof; and (vii) that every person who produces, transports or stores oil or gas in this state shall make available within this state for a period of five (5) years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable times, and that that person file with the board such reports as it may prescribe with respect to quantities, transportations, and storages of the oil or gas.

(b) For the purpose of preventing waste, (i) regulate the drilling, producing and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations, and, (ii) fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

(c) Regulate the disposal of salt water and oil field wastes.

(d) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(e) Adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter. The board shall promulgate rules to implement (a) (iv) of this subsection (2), no later than November 1, 1974.

(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wildcat wells" and make such orders as in its judgment are required to protect those wells, and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas from that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969; amd. Sec. 56, Ch. 253, L. 1974; amd. Sec. 1, Ch. 260, L. 1974; amd. Sec. 1, Ch. 222, L. 1975.

Amendments

Chapter 253, Laws of 1974, provided the present subsection and subdivision designations; deleted a former first subsection reading "The commission has jurisdiction to exercise effectively the authority granted it by this act"; substituted "board" for "commission" throughout the section; substituted "chapter" for "act" throughout the section; substituted the present preliminary clause of subsection (2) for one reading "The commission has authority, and it is its duty"; deleted from the end of sub-

section (2) a subdivision reading "To report as provided in section 82-4002"; substituted "April 1, 1953" in subsection (4) for "the date on which this act takes effect"; and made numerous minor changes in punctuation and phraseology.

Chapter 260, Laws of 1974, substituted "board" throughout the section for "commission"; inserted subdivision (2)(a)(iv); added the second sentence to subdivision (2)(e); and made minor changes in style.

The 1975 amendment inserted "including bottom-hole temperatures, to facilitate the discovery of potential geothermal energy sources" in clause (ii) of subdivision (2)(a); and made a minor change in phraseology.

60-127.1. Waste of oil and gas prohibited. Waste of oil and gas or either of them as waste is defined in this chapter, is prohibited.

History: En. Sec. 1, Ch. 238, L. 1953; Sec. 60-124, R. C. M. 1947; amd. and redes. 60-127.1 by Sec. 54, Ch. 253, L. 1974.

Amendments

The 1974 amendment renumbered this section; and substituted "chapter" for "act."

60-128. Notice of intention to drill. It is unlawful to commence the drilling of a well for oil or gas without first filing with the board written notice of intention to drill, and obtaining a drilling permit as provided in section 60-145(4). It is unlawful to conduct seismic explorations with explosives without first giving the board a copy of the notice of intention to explore, filed with the county under section 69-3303.

History: En. Sec. 5, Ch. 238, L. 1953; amd. Sec. 57, Ch. 253, L. 1974; amd. Sec. 2, Ch. 260, L. 1974.

Amendments

Chapter 253, Laws of 1974, substituted "provided in section 60-145(4)" in the first sentence for "in this act hereafter provided"; substituted "board" for "commission" in the first sentence; and made minor changes in phraseology.

Chapter 260, Laws of 1974, substituted "board" in the first sentence for "commission"; and added the second sentence.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 260, and once by Ch. 253. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

60-129. Well spacing units—orders. (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, the board, upon its own motion or upon application of an interested person, after hearing, may by order establish well spacing units for a pool, as to oil wells or as to gas wells or both, except in those pools which, prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Spacing units when established shall in so far as possible be of uniform size and shape for the entire pool.

(2) The size and the shape of spacing units shall be such as will result in the efficient and economic development of the pool as a whole, and the size shall be the area that can be efficiently drained by one (1) well.

(3) Subject to this chapter, the order establishing spacing units shall direct that no more than one (1) well may be drilled and produced from the common source of supply on any spacing unit, and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where it is shown, upon application, notice, and hearing, and the board finds, that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable.

(4) An order establishing spacing units for a pool shall cover all lands then determined or then believed to be underlaid by the pool and may be modified after notice and hearing by the board from time to time to include additional areas subsequently determined to be underlaid

by the pool. When found necessary for the prevention of waste, an order establishing spacing units in a pool may be modified after notice and hearing by the board to increase or decrease the size of spacing units in the pool, or to permit the drilling of additional wells on a reasonably uniform plan in the pool.

History: En. Sec. 6, Ch. 238, L. 1953; substituted "board" throughout the section
amd. Sec. 58, Ch. 253, L. 1974. for "commission"; substituted "April 1, 1953" in subsection (1) for "the effective date of this act"; and made minor changes in style and phraseology.

Amendments

The 1974 amendment substituted "chapter" in subsections (1) and (3) for "act";

60-130. Pooling of interest within spacing unit—voluntary or on order of board after hearing—contents of order. (1) When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, within the spacing unit, the board, upon the application of an interested person, may enter an order pooling all interests in the spacing unit for the development and operation thereof. The pooling order shall be made after hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled thereon.

(2) The pooling order shall provide for the drilling and operating of a well on the spacing unit, and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling and storage. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share of the cost out of, and only out of, production from the well allocable to his interest in the spacing unit, excluding royalty or other interest not obligated to pay any part of the cost thereof. If a dispute arises as to the cost, the board by order shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production and thereafter all of the owners in the spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

History: En. Sec. 7, Ch. 238, L. 1953; amd. Sec. 59, Ch. 253, L. 1974.

throughout the section for "commission"; inserted "by order" in the third sentence of subsection (2) after "board"; and made minor changes in style and phraseology.

Amendments

The 1974 amendment substituted "board"

60-131. Agreements for development and operation of pool—not in violation of state antitrust laws when approved by board. An agreement for the unit or co-operative development and operation of a field or pool or any part of either, or for conducting repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or co-operative operation, including water flooding, is authorized and may be performed. Such an agreement does not violate any of the statutes of this state relating to trusts, monopolies or contracts and combinations in restraint of trade if the agreement is approved by the board as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas.

History: En. Sec. 8, Ch. 238, L. 1953; amd. Sec. 60, Ch. 253, L. 1974.

in the caption and in the last sentence of this section for "commission"; and made minor changes in style and phraseology.

Amendments

The 1974 amendment substituted "board"

60-131.1. Operation of pool as unit—board to hold hearing—notice.

(1) The board, upon the application of persons owning leasehold interests underlying sixty per cent (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one (1) or more pools or parts thereof in a field, for enhanced recovery purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least sixty (60) days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at that person's last known address, of the applicant's intention to make the application. At the same time producers shall be furnished with a plan of unit operations. Upon written request of an operator of a lease which is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing.

History: En. Sec. 1, Ch. 33, L. 1969; amd. Sec. 1, Ch. 150, L. 1971; amd. Sec. 61, Ch. 253, L. 1974; amd. Sec. 2, Ch. 336, L. 1977.

gas only is produced" at the end of subsection (1); and made minor changes in style and phraseology.

Amendments

The 1971 amendment inserted "as to oil or oil and gas" in subsection (1) after "recovery purposes"; added "or to increase ultimate recovery or to prevent waste of gas from pools or portions of pools where

The 1974 amendment designated the first paragraph as subsection (1) and redesignated the second paragraph as subsection (2); substituted "board" for "commission" throughout the section; and made minor changes in style, punctuation and phraseology.

The 1977 amendment substituted "enhanced recovery" in subsection (1) for "pressure maintenance or secondary recovery."

Unitization of Entire Reservoir

Application by oil and gas lessee to the commission for unitization of a reservoir

did not constitute a breach of one-well pooling provision in lease; unitization of an entire reservoir under this section is entirely different from one-well pooling pursuant to section 60-130. *Armstrong v. High Crest Oils, Inc.*, — M —, 520 P 2d 1081.

60-131.2. Board order—criteria. The board shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at the hearing, that:

(1) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas;

(2) The value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting such operations; and

(3) The full areal extent of the pool or pools or part thereof has been reasonably defined and determined by drilling operations.

History: En. Sec. 2, Ch. 33, L. 1969; amd. Sec. 2, Ch. 150, L. 1971; amd. Sec. 62, Ch. 253, L. 1974.

Amendments

The 1971 amendment inserted "or, as

to gas pools only, the value of the economies to be effected" in subdivision (2).

The 1974 amendment substituted "board" for "commission" in the caption and at the beginning of the section; and made minor changes in punctuation and phraseology.

60-131.3. Terms and conditions of order—requirements. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) A statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement.

(3) A plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective invest-

ments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%) for the service. Recovery of the money advanced, plus interest, shall be limited to, and only shall be recoverable from, the owners' share of production. The recovery shall be as follows:

(a) (1) In the case of a field producing oil, or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools as a result of the natural energy therein and without the introduction of an enhanced recovery program.

(2) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of the owners' share of production.

(b) In the case of a field producing only gas, the recovery shall be from one hundred per cent (100%) of the owners' share of production.

(c) In the case of any enhanced recovery program that is initiated subsequent to a secondary recovery program, the recovery shall be from 75% of the owners' increased share of production from such subsequent program.

(6) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner.

(7) A provision whereby the unit operator, after having operated for a minimum period of two (2) years, can be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that: (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and financially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and, (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of the conditions of operations.

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(9) Such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights.

History: En. Sec. 3, Ch. 33, L. 1969; amd. Sec. 3, Ch. 150, L. 1971; amd. Sec. 63, Ch. 253, L. 1974; amd. Sec. 3, Ch. 336, L. 1977.

Amendments

The 1971 amendment added the second sentence to subdivision (1); redesignated former subdivisions (5)(a) and (5)(b) as subdivisions (5)(a)(1) and (5)(a)(2), respectively; inserted "In the case of a field producing oil, or oil and gas" at the beginning of subdivision (5)(a)(1); in-

serted a new subdivision (5)(b); and made minor changes in phraseology.

The 1974 amendment substituted "March 1, 1971" in the last sentence of subdivision (1) for "the effective date of this act"; substituted "board" in subdivision (3) for "commission"; and made minor changes in style, punctuation and phraseology.

The 1977 amendment substituted "enhanced recovery" for "secondary recovery" near the end of subdivision (5)(a)(1); inserted subdivision (5)(c), and made minor changes in phraseology.

60-131.4. Plan for unit operations—approval by those paying costs required—conditions for approval. An order of the board providing for unit operations may not become effective unless and until the plan for unit operations prescribed by the board has been approved in writing by those persons who, under the board's order, will be required to pay at least eighty per cent (80%) of the costs of the unit operations, and also by the persons owning at least eighty per cent (80%) of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the board has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; however, if one (1) owner who is obligated to pay costs of the unit operation owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that owner and at least one (1) other such owner is required, and if one (1) person entitled to production or proceeds thereof that will be credited to interests which are free of costs, owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that person and at least one (1) other such person is required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the board shall, upon application and notice, hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of six (6) months from the date on which the order providing for unit operations is made, the board shall revoke the order unless for good cause shown the board extends the time.

History: En. Sec. 4, Ch. 33, L. 1969; amd. Sec. 64, Ch. 253, L. 1974.

throughout this section for "commission"; and made minor changes in style and phraseology.

Amendments

The 1974 amendment substituted "board"

60-131.5. Amendment of board order—conditions. An order providing for unit operations may be amended by an order made by the board in the same manner and subject to the same conditions and notice as an original order providing for unit operations, however, (a) if such an amendment affects only the rights and interests of the owners, the ap-

proval of the amendment by the persons owning interest which are free of costs, such as royalties, overriding royalties and production payments, is not required, and (b) an order of amendment may not change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in the tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in the tract.

History: En. Sec. 5, Ch. 33, L. 1969; amd. Sec. 65, Ch. 253, L. 1974.

in the caption and near the beginning of this section for "commission"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "board"

60-131.6. Units established by previous order may be included—manner of inclusion. The board, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the board made prior to February 13, 1969. The order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in the previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by the order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations is not liable for any unit operating costs incurred prior to the person's entry in the unit. At the time the interest is included in the unit, an equipment inventory shall be made in order to charge the newly committed interest with its proportionate share of capital investment at its then value. An oil-in-storage inventory shall be taken immediately prior to adding the newly committed interest.

History: En. Sec. 6, Ch. 33, L. 1969; amd. Sec. 4, Ch. 150, L. 1971; amd. Sec. 66, Ch. 253, L. 1974.

The 1974 amendment substituted "board" in the first sentence for "commission"; substituted "February 13, 1969" at the end of the first sentence for "the effective date of this amendment to Title 60, chapter 1, Revised Codes of Montana"; and made minor changes in phraseology.

Amendments

The 1971 amendment substituted "prior to the effective date" for "subsequent to the effective date" in the first sentence.

60-131.8. Presumptions—compliance with board order constitutes fulfillment of lease or contract obligations. All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area, shall be considered for all purposes the conduct of those operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be considered, for all purposes, to have been actually produced from the tract by a well drilled thereon. Operations conducted pursuant to an order of the board providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that the obligations cannot be performed because of the order of the board.

History: En. Sec. 8, Ch. 33, L. 1969; for "commission" throughout this section; amd. Sec. 67, Ch. 253, L. 1974. and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "board"

60-131.9. Property rights—operator's lien—perfection of lien. That portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to section 60-131.3, subdivision (5) (a) (1), have a first and prior lien upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of developing and operating the unit area. Such lien may be perfected and enforced in the same manner as provided in Title 45, chapter 5, Revised Codes of Montana, 1947, as amended. Upon demand by any owner of working interest in any tract to which gas has been allocated, the unit operator shall deliver such allocated share of gas to the owner in kind; but the operator and the other owners of interest shall not be required to bear the cost of providing additional facilities for the delivery of such gas.

History: En. Sec. 9, Ch. 33, L. 1969; of that section; and added the third sentence. amd. Sec. 5, Ch. 150, L. 1971.

Amendments

The 1971 amendment changed the reference in the first sentence to section 60-131.3 in accordance with the amendment

Effective Date

Section 6 of Ch. 150, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

60-131.10. Contract relating to tract not terminated by board order. A division order or other contract relating to the sale or purchase or production from a tract may not be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to the tract until terminated in accordance with the provisions thereof.

History: En. Sec. 10, Ch. 33, L. 1969; amd. Sec. 68, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board" in the caption for "commission"; and made minor changes in phraseology.

60-131.11. Title to oil and gas rights not affected by board order—allocation of property. Except to the extent that the parties affected so agree, an order providing for unit operations does not result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

History: En. Sec. 11, Ch. 33, L. 1969; amd. Sec. 69, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board" in the caption for "commission"; and made minor changes in phraseology.

60-131.12. Trade not restrained by unit operations. The formation of a unit as provided in sections 60-131.1 through 60-131.13 and the operation of the unit under order of the board shall not be in violation of any statute of this state relating to trusts, monopolies, contracts or combinations in restraint of trade.

History: En. Sec. 12, Ch. 33, L. 1969; provided in sections 60-131.1 through 60-131.13" for "as herein provided"; substituted "board" for "commission"; and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "as

60-132. Administrative Procedure Act—orders—notice. (1) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) applies to this chapter.

(2) An order, or amendment thereof, except in an emergency, may not be made by the board without a public hearing upon at least ten (10) days' notice. The public hearing shall be held at such time and place as may be prescribed by the board, and any interested person is entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the board may issue an emergency order without advance notice or hearing, which shall be effective upon promulgation. An emergency order may not remain in effect more than fifteen (15) days.

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one (1) or more issues of a newspaper in general circulation in Helena and a newspaper of general circulation in the county where the land or some part thereon is situated, and the board may also cause publication to be made in a trade journal or bulletin of general circulation in the oil and gas industry in the state.

(5) Proof of service by publication under subsection (4) shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published, or by a foreman or principal clerk of the newspaper, bulletin or trade journal.

(6) Except as provided otherwise in this chapter, the board may act upon its own motion, or upon the petition of an interested person. On the filing of a petition concerning a matter within the jurisdiction of the board, the board shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The board shall enter its order within thirty (30) days after the hearing.

History: En. Sec. 9, Ch. 238, L. 1953; amd. Sec. 1, Ch. 213, L. 1961; amd. Sec. 71, Ch. 253, L. 1974.

Amendments

The 1974 amendment redesignated the subsections; substituted "board" for "commission" throughout the section; substituted subsection (1) for former subsection A; substituted "If notice is required * * * notice shall be made" at the beginning of subsection (4) for "In all other cases";

inserted "under subsection (4)" in subsection (5); substituted "chapter" in subsection (6) for "act"; deleted large portions of former subsection D relating to the giving of notice by personal service or mail, proof of service, and power of the commission secretary with regard thereto; deleted former subsection E relating to rules, regulations and orders of the commission; and made numerous minor changes in phraseology.

60-133. Subpoena power of board—chapter does not abrogate civil actions—enforcement of chapter when board fails to enjoin violations. (1) If the Montana Administrative Procedure Act does not apply, the board may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. Witnesses subpoenaed under this subsection shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the board, a violation charged or asserted against a person under this chapter, or a rule or order issued under this chapter, does not impair, abridge, or delay a cause of action for damages or other civil remedy, which a person may have or assert against a person violating this chapter, or a rule or order issued under it. A person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive. If the board fails to bring suit to enjoin a violation or threatened violation of this chapter, or a rule or order of the board within ten (10) days after receipt of written request to do so by a person who is or will be adversely affected by the violation, the person making the request may bring the suit in his own behalf to restrain the violation or threatened violation in a court in which the board might have brought suit. The board shall be made a party defendant in the suit in addition to the person violating or threatening to violate this chapter, or a rule or order of the board, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the board.

(3) If a person fails or refuses to comply with the subpoena issued by the board or if a witness refuses to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the board, may issue a warrant of attachment for the person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with the subpoena, and to attend before the board and produce any subpoenaed records, books, and documents for examination, and to give his testimony. The court may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein.

History: En. Sec. 10, Ch. 238, L. 1953; amd. Sec. 72, Ch. 253, L. 1974.

Procedure Act does not apply" at the beginning of subsection (1); inserted "under this subsection" in the second sentence of subsection (1); substituted "chapter" throughout subsection (2) for "act"; deleted "regulation" throughout subsection (2) after "rule"; and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted references to the "board" for references to "commission" throughout the section; inserted "If the Montana Administrative

60-134. Rehearing. A person adversely affected by a rule or order of the board may within twenty (20) days after its effective date apply to the board in writing for a rehearing. The application for rehearing shall be acted upon within ten (10) days after its filing, and if granted, the rehearing shall be held without undue delay.

History: En. Sec. 11, Ch. 238, L. 1953; amd. Sec. 73, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted "regula-

tion" in the first sentence after "rule"; "commission"; and made a minor change substituted "board" in two places for in phraseology.

60-135. Court review of order of board by suit for injunction—trial de novo—temporary restraining order, when allowed, bond—appeals. (1) Any interested person adversely affected by any provision of this chapter, or by any rule or order adopted by the board hereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by a suit for an injunction against the board as defendant, which suit may be instituted in the district court of the county where the board keeps its principal office, or in the district court of any county wherein the land involved or any part thereof is situated. The term "interested person," as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well, or involves some other act which clearly affects the plaintiff even though the effect is indirect; and if the act complained of involves a general order for a pool, or the right to drill a well therein, a person who owns or has an interest in a well in the pool, which well is capable of producing oil or gas, shall be considered to be, *prima facie*, an interested person. The suit shall be given a preferential setting, and shall be tried *de novo* and disposed of as an ordinary civil suit, and not upon the record of any hearing before the board. The statute, rule, order, or decision involved in the suit shall be *prima facie* valid; however, the finding of fact, actual or presumed, made by the board in support of the rule, order, or decision involved in the suit is not binding on the court though supported by evidence introduced at a hearing before the board. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any board action. The court shall:

(a) compel board action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside board action, findings, and conclusions found to be:

(1) arbitrary, unreasonable, capricious, and abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unwarranted by the facts.

The court shall consider all the evidence, shall pass on the credibility of witnesses and the weight to be given their testimony, and shall resolve such fact issues as may be necessary for decision in the case.

(2) A temporary restraining order or temporary injunction of any kind may not be granted against the board and its members or against the attorney general, or against an employee of the board, restraining the board and its members, or employees, or the attorney general, from enforcing this chapter, or any rule or order made thereunder, until it is shown to the satisfaction of the court that the act done or threatened is

probably without sanction of the law or that the provisions of this chapter, or the rule or order complained of is probably invalid or unreasonable, and that, if enforced against the complaining party, will probably cause an irreparable injury. With respect to an order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of this chapter, or of a rule or order thereunder involved in the suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(3) A temporary restraining order or temporary injunction of any kind against the board or its members, or its employees, or the attorney general, may not be effective until the plaintiff executes a bond with sufficient sureties in such amount and upon such conditions as the court directs. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. A person claiming injury must bring suit within six (6) months after the date of the final determination of the validity, in whole or in part of the provisions of the chapter or the rule or order, the enforcement of which was enjoined; otherwise the right to bring such suit is forever barred.

(4) An appeal to the supreme court may be taken from any final judgment, decree or order in the action, as provided in the Rules of Appellate Civil Procedure of Title 93, R. C. M. 1947.

History: En. Sec. 12, Ch. 238, L. 1953; amd. Sec. 74, Ch. 253, L. 1974.

late Civil Procedure" in subsection (4) for "chapter 80"; and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "chapter" throughout the section for "act"; substituted "board" throughout the section for "commission"; deleted references to agents and representatives before and after "employee" in the first sentences of subsections (2) and (3); deleted references to regulations after "rule" throughout the section; substituted "the Rules of Appel-

Collateral Challenge

Order of commission to create gas unit was res judicata except in appropriate district court on judicial review as provided in this section; lessor's successors in interest could not collaterally challenge order by suit before different district court. *Armstrong v. High Crest Oils, Inc.*, — M —, 520 P 2d 1081.

60-136. Enjoining violations of chapter. Whenever it appears that a person is violating or threatening to violate this chapter, or a rule or order of the board, the board shall bring suit against that person in the district court of any county where the violation occurs or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court may grant to the board, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders.

History: En. Sec. 13, Ch. 238, L. 1953; amd. Sec. 75, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "chap-

ter" near the beginning of the section for "act"; substituted "board" throughout the section for "commission"; and made minor changes in phraseology.

60-137, 60-138. Repealed.**Repeal**

Sections 60-137 and 60-138 (Secs. 14, 15, Ch. 238, L. 1953), relating to rules and regulations of the board of railroad commis-

sioners and of the oil conservation board, and substitution of the commission for those boards, were repealed by Sec. 108, Ch. 253, Laws of 1974.

60-140. Lands subject to act. This chapter applies to all lands in the state lawfully subject to its taxation and police powers. It applies to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands fails to effect the intent and purposes of this chapter and otherwise applies to those lands to such extent as any officer of the United States having jurisdiction, or his duly authorized representative, approves any of the provisions of this chapter or an order of the board which affect those lands. This chapter also applies to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the board may, with respect to those unit agreements, suspend the application of this chapter or any part of this chapter so long as the conservation of oil and gas and the prevention of waste as provided in this chapter is accomplished under the unit agreements; the suspension does not relieve an operator or owner from making such reports as may be required by the board with respect to operations and production under the unit agreement, and the suspension does not relieve an operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this chapter.

History: En. Sec. 17, Ch. 238, L. 1953; amd. Sec. 76, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "chap-

ter" and references thereto throughout this section for "act" and references thereto; substituted "board" throughout the section for "commission"; and made minor changes in punctuation and phraseology.

60-141. Co-operation with other governmental units and agencies. The board may co-operate with any other state, interstate, or federal agency, and other governmental agencies of the state to effect the objects and purposes of this act and expend such funds as may be reasonably necessary in connection therewith.

History: En. Sec. 18, Ch. 238, L. 1953; amd. Sec. 77, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission"; and made minor changes in style and phraseology.

60-142. Penalties. If a person willfully violates any lawful rule or order of the board, or if a person, for the purpose of evading this chapter, or any rule or order of the board, knowingly and willfully (1) makes or causes to be made a false entry or statement in a report required by this chapter or by a rule or order of the board, or a false entry in a record, account, or memorandum required by this chapter, or by a rule or order, or (2) omits, or causes to be omitted, from the record, account, or memorandum, full, true, and correct entries as required by this chapter, or by a rule or order, or (3) removes from this state or destroys, mutilates, al-

ters, or falsifies the record, account, or memorandum, that person is guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars (\$5,000) or imprisonment in a county jail for a term not exceeding six (6) months, or to both the fine and imprisonment.

History: En. Sec. 19, Ch. 238, L. 1953;
amd. Sec. 78, Ch. 253, L. 1974.

before "or order"; substituted "board" throughout the section for "commission"; substituted "chapter" throughout the section for "act"; and made minor changes in style and phraseology.

Amendments

The 1974 amendment deleted references to regulations throughout the section

60-143. Chapter does not constitute oil or gas wells as public utilities. Nothing in this chapter shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities.

History: En. Sec. 20, Ch. 238, L. 1953;
amd. Sec. 79, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act"; and made a minor change in phraseology.

60-144. Owners shall make available to board cores and cuttings. (1) An owner drilling a well for gas or oil shall make available to the board at its field offices representative cores or chips, when available, the cuttings from the well, and the bottom-hole temperatures of the wells, in order to facilitate the discovery of geothermal potential. However, cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of the wells. The board may, however, relieve the owner of a well of the obligation to furnish cores, chips, or cuttings when in the opinion of the board, the furnishing thereof would be unduly burdensome for the owner; however, the owner desiring relief must apply to and receive permission from the board to not so furnish.

(2) The owner of a stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the board's rules shall within six (6) months from the date of the cessation of the drilling of the well, make available to the board, complete sets of sample cuttings and representative cores or chips and well logs of the wells, which logs shall include among other information the size of casing used, the type and depth of water if any located, and bottom-hole temperatures for geothermal purposes; the cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the board until such time that the board desires to use the same; however, the board may not use the logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the board has elapsed unless the owner of the stratigraphic test well consents to their use by the board prior to the expiration of the three (3) year period. The board, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, may not give any person access to the cores, chips, cuttings or logs, and it may not disclose any information relating thereto or derived therefrom. The board shall require, and the owner of a stratigraphic test well shall furnish, prior to the commencement of drilling of the well, a good and sufficient surety bond, to be approved prior to

the commencement of the drilling, conditioned upon the proper plugging of the well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the board's rules provided for oil and gas wells, and, prior to abandonment, the wells shall be plugged by the owner thereof, or by the surety should the owner be in default, the plugging to conform to the standards set down and determined by the board.

(3) Notwithstanding subsection (2), bottom-hole temperatures furnished to the board by stratigraphic test well owners shall be public information immediately upon filing with the board.

History: En. Sec. 21, Ch. 238, L. 1953; amd. Sec. 1, Ch. 224, L. 1955; amd. Sec. 1, Ch. 234, L. 1959; amd. Sec. 1, Ch. 208, L. 1973; amd. Sec. 80, Ch. 253, L. 1974; amd. Sec. 2, Ch. 222, L. 1975.

Amendments

The 1973 amendment deleted from the end of the section a sentence reading: "The provisions of this section shall not apply to core holes or tests less than one thousand (1,000) feet in depth drilled primarily for structural information."

The 1974 amendment substituted "board" throughout the section for "commission"; and made minor changes in punctuation and phraseology.

The 1975 amendment divided the section into subsections; added to the end of the first sentence of subsection (1) the language relating to bottom-hole temperatures; inserted "and bottom-hole temperatures for geothermal purposes" in the middle of the first sentence of subsection (2); and added subsection (3).

Effective Date

Section 2 of Ch. 208, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

60-145. Privilege and license tax—quarterly statements—penalties—drilling permit fees—oil and gas conservation moneys. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, the operators and producers of oil and gas shall pay an assessment not to exceed 2/10 of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state, and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported therefrom.

(2) The board shall by order, without prior notice, or hearing, fix the amount of the assessments and may, from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; however, the assessments fixed by the board may not exceed the limits prescribed in this section. The amounts of the assessments shall be a percentage factor (not to exceed 100%) of the rates set forth in subsection (1) above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each 10,000 cubic feet of natural gas mentioned in those subsections. The producers of the crude petroleum and natural gas shall pay the assessments on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and the producers shall be reimbursed for the payments made on crude oil and natural gas produced for others in the same manner as they

are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others under 84-6208.

(3) For the purposes of this section, a "lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one particular unit agreement shall be considered as one lease relative to payments to be made under this section.

(4) In addition to the above-mentioned privilege and license tax, a person, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, shall secure from the board a drilling permit and shall pay to the board therefor the following amounts: for each well whose estimated depth is 3,500 feet or less, \$25; from 3,501 feet to 7,000 feet, \$75; 7,000 feet and deeper, \$150.

(5) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August and November, of each calendar year, render a true statement to the state treasurer of the state, and a duplicate thereof to the board, duly signed and sworn to, of all crude petroleum produced and marketed by him in this state during the preceding quarter, and containing such other information as the board may require, and shall accompany the statement with the payment to the state treasurer of the assessment provided for in subsection (1) of this section, for the period covered by the statement. Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced and marketed by him in this state, and shall make payment of the assessment provided for in subsection (1) of this section, at such times and for such periods as may be prescribed by rule of the board. Any producer carrying on business at more than one place or location in this state may include all those places of business in one statement. The assessment imposed herein shall be due at the time the oil or natural gas is marketed. Oil or natural gas shall be deemed marketed when it is removed from the property from which it was produced.

(6) An assessment not paid within the time specified is delinquent, and a penalty of 25% thereof shall be added thereto and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon request of the board the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(7) All money collected under this chapter shall be deposited in the earmarked revenue fund by the state treasurer of the state, and shall be used for the purpose of paying all expenses of the board and for no other purpose; all these moneys shall be used by the board subject to the approval of the department of administration and biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the earmarked revenue fund shall be credited to the board.

History: En. Sec. 22, Ch. 238, L. 1953; amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. 1961; amd. Sec. 160, Ch. 147, L. 1963; amd. Sec. 1, Ch. 315, L. 1973; amd. Sec. 1, Ch. 130, L. 1974; amd. Sec. 81, Ch. 253, L. 1974; amd. Sec. 1, Ch. 413, L. 1975; amd. Sec. 1, Ch. 178, L. 1977; amd. Sec. 1, Ch. 254, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 178 and once by Ch. 254. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment increased the assessment in subdivision (1)(a) from $\frac{1}{4}$ cent to $\frac{3}{8}$ cent per barrel and in subdivision (1)(b) from $\frac{1}{2}$ cent to $\frac{3}{4}$ cent per barrel; increased the assessment in the first sentence of subdivision (1)(c) from one mill to $2\frac{1}{2}$ mills per ten thousand feet where sold for less than 15¢ per thousand feet, and from one mill to five mills per ten thousand feet where sold for 15¢ or more per thousand feet; and inserted "or stratigraphic test well or core hole" in subsection (4).

Chapter 130, Laws of 1974, substituted "February, May, August and November" in the first sentence of subsection (5) for "January, April, July and October"; and made minor changes in style.

Chapter 253, Laws of 1974, substituted "chapter" for "act" throughout the section; substituted "board" for "oil and gas conservation commission" and "commission" throughout the section; deleted "Such payments shall be made during the time the oil and gas conservation commission is in existence" at the end of subsection (1); deleted "in the first instance" near the beginning of subsection (2) after "amount of the assessments"; deleted "to be fixed by the commission in the first instance and from time to time as herein provided" at the beginning of the second sentence of subsection (2) after "the assessments"; substituted "department of administration" near the end of subsection (7) for "controller"; deleted two sentences

at the end of subsection (7) relating to disposition of moneys on termination of the commission; deleted a former last subsection relating to commission members, compensation, expenses, and expenditures; and made numerous minor changes in style, punctuation and phraseology. For material deleted after subsection (7), see parent volume.

The 1975 amendment inserted "and marketed" after "crude petroleum produced" and "natural gas produced" in the first and second sentences of subsection (5); added the last two sentences of subsection (5); and made minor changes in phraseology and style.

Chapter 178, Laws of 1977, rewrote all of subsection (1) after "an assessment not to exceed" which read: "the amounts set forth in the following schedule on each barrel of crude petroleum originally produced, saved and marketed or stored within the state, or exported from the state, and on each ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state, or exported therefrom: (a) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent ($3/8\phi$) per barrel; (b) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent ($3/4\phi$) per barrel; and (c) On wells producing, saving and marketing, storing, or exporting, natural gas, the operators and producers shall pay an assessment not to exceed two and one-half ($2\frac{1}{2}$) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet"; and made minor changes in style.

Chapter 254, Laws of 1977, added the last sentence in subsection (7) relating to income and interest.

60-146, 60-147. Repealed.

Repeal

Sections 60-146 and 60-147 (Secs. 1, 2, Ch. 32, L. 1957; Sec. 161, Ch. 147, L. 1963),

relating to the petroleum field station of the bureau of mines at Billings, were repealed by Sec. 208, Ch. 253, Laws of 1974.

60-148. Availability of facilities to bureau. The board may make available to the authorized personnel or representatives of the bureau of mines and geology such facilities, equipment, records, and cores and cuttings, or samples of cores and cuttings, as are, or may be, required by

the bureau in the furtherance of its oil and gas research and study. Bottom-hole temperatures of oil and gas wells shall be made available to the bureau of mines and geology by the board in order to facilitate the determination of possible geothermal energy sources.

History: En. Sec. 3, Ch. 32, L. 1957; amd. Sec. 82, Ch. 253, L. 1974; amd. Sec. 3, Ch. 222, L. 1975.

Amendments

The 1974 amendment substituted "board"

at the beginning of the section for "commission"; inserted "of mines and geology" after "the bureau"; and made a minor change in phraseology.

The 1975 amendment added the second sentence.

60-149. Department to inventory abandoned wells and seismic operations; reclamation procedures. (1) The department of natural resources and conservation shall maintain a list of the abandoned oil or gas wells, injection wells, sumps, and seismographic shot holes in the state which disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the oil and gas board. This list shall be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the list supplied by the department under the preceding subsection against its drilling records and shall determine the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person so listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by his abandoned wells, sumps, or holes within three years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located under the preceding subsection, the board shall notify the department of natural resources and conservation. The department may then reclaim the disturbed land with funds available from the resource indemnity trust fund, under section 84-7009, when available.

History: En. 60-149 by Sec. 3, Ch. 260, L. 1974.

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION

Section

- 60-234. Definitions.
- 60-235. Enforcement of act—rules.
- 60-236. Standards for petroleum products.
- 60-237. Department authorized to employ laboratory for testing.
- 60-238. Licenses and fees.
- 60-239. Refusing, suspending, and revoking licenses—hearing required.
- 60-240. Inspections, sampling, and tests by department to insure compliance with act.
- 60-241. Approved measure required for part delivery.
- 60-242. Full compartment sales—approval of meter.
- 60-243. Dispensation and sale of petroleum products.
- 60-244. Penalty for violations.
- 60-245. Injunction against violations.

60-203.1 to 60-203.3, 60-204, 60-205. (3913.4, 3913.5) **Repealed.**

Repeal

Sections 60-203.1 to 60-205 (Secs. 4, 5, Ch. 109, L. 1927; Secs. 1 to 5, Ch. 174, L. 1961; Secs. 125, 126, Ch. 431, L. 1975),

relating to petroleum products standards, manufacture and distribution, were repealed by Sec. 13, Ch. 77, Laws 1977.

60-210 to 60-217. (3913.10, 3913.14 to 3913.19) Repealed.

Repeal

Sections 60-210 to 60-217 (Secs. 8, 12 to 17, Ch. 109, L. 1927; Sec. 1, Ch. 206, L. 1945; Secs. 6 to 11, Ch. 174, L. 1961; Sec.

127, Ch. 431, L. 1975), relating to petroleum products standards, manufacture and distribution, were repealed by Sec. 13, Ch. 77, Laws 1977.

60-219, 60-220. (3913.21, 3913.22) Repealed.

Repeal

Sections 60-219, 60-220 (Sec. 19, Ch. 109, L. 1927; Sec. 1, Ch. 147, L. 1935; Secs. 12, 13, Ch. 174, L. 1961; Secs. 128, 129, Ch.

431, L. 1975), relating to revocation of petroleum product dealer's license, were repealed by Sec. 13, Ch. 77, Laws 1977.

60-222 to 60-224. (3913.24) Repealed.

Repeal

Sections 60-222 to 60-224 (Sec. 20, Ch. 109, L. 1927; Sec. 14, Ch. 174, L. 1961; Secs. 1, 2, Ch. 153, L. 1965; Secs. 130, 131,

Ch. 431, L. 1975), relating to licensing of petroleum product dealers, were repealed by Sec. 13, Ch. 77, Laws 1977.

60-225. Repealed.

Repeal

Section 60-225 (Sec. 3, Ch. 153, L. 1965), relating to the place of business license

and fee for petroleum dealers, was repealed by Sec. 1, Ch. 142, Laws of 1974.

60-226 to 60-233. Repealed.

Repeal

Sections 60-226 to 60-233 (Secs. 4 to 11, Ch. 153, L. 1965; Secs. 132 to 136, Ch. 431, L. 1975; Sec. 32, Ch. 39, L. 1977), relating

to petroleum products standards, license fees, manufacture and distribution, were repealed by Sec. 13, Ch. 77, Laws 1977.

60-234. Definitions. As used in this act the following definitions apply:

(1) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(2) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(3) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(4) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product, except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (5).

(5) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

(6) "Sell" and "sale" includes barter and exchange.

(7) "Mislabeled" means a package label or dispensing device of a product which bears any statement, design, or device regarding the same or regarding ingredients or substances therein or regarding the properties, quality, or kind of such products, which is false or misleading in any manner.

History: En. 60-234 by Sec. 1, Ch. 77, the regulation of manufacture and distribution of petroleum products; repealing L. 1977. chapter 2 of Title 60, R.C.M. 1947, in its entirety.

Title of Act

An act relating to the standards and

60-235. Enforcement of act—rules. This act shall be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this act, and those rules have the effect of law.

History: En. 60-235 by Sec. 2, Ch. 77, L. 1977.

60-236. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, shall be determined by the department and shall be based upon nationally recognized standards and specifications such as are published from time to time by the American society for testing materials. When so determined by the department and adopted as rules, such standards and specifications are the standards and specifications for such products sold in this state and official tests of such products shall be based upon them.

History: En. 60-236 by Sec. 3, Ch. 77, L. 1977.

60-237. Department authorized to employ laboratory for testing. The department may employ a laboratory having sufficient facilities to make tests of petroleum products as required and pay reasonable compensation for the analyses and tests made by it.

History: En. 60-237 by Sec. 4, Ch. 77, L. 1977.

60-238. Licenses and fees. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until a license has been issued to him by the department. The license shall be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this act.

(2) The fee for this license shall be determined as follows and depends upon the number of devices utilized by the dealer:

(a) each gasoline pump, diesel pump, or fuel oil pump measuring device—\$3;

- (b) each petroleum vehicle tank meter or bulk petroleum meter of 2 inches (5.08 centimeters) and under—\$10;
- (c) each bulk petroleum meter over 2 inches (5.08 centimeters)—\$15;
- (d) each liquefied petroleum liquid meter—\$15;
- (e) each vapor meter—\$3;
- (f) each petroleum and liquefied petroleum vehicle tank up to and including 2,000 gallons (7,570 liters)—\$20;
- (g) each petroleum and liquefied petroleum vehicle tank over 2,000 gallons (7,570 liters)—\$20 plus \$4 for each additional 1,000 gallons (3,785 liters).

(3) All licenses are annual and nontransferable as to person or location and expire on December 31 of each year. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment shall be sealed and removed from service by the department. It is unlawful for anyone to use a device so removed from service or to break the seal until all fees have been paid.

History: En. 60-238 by Sec. 5, Ch. 77,
L. 1977.

60-239. Refusing, suspending, and revoking licenses—hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after hearing noticed for not less than 10 days. Violation of any provision of this act or any lawful order or rule of the department are causes for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on those terms which the department considers just and proper.

History: En. 60-239 by Sec. 6, Ch. 77,
L. 1977.

60-240. Inspections, sampling, and tests by department to insure compliance with act. (1) For the purpose of obtaining information regarding suspected violation of this act, the department has access to all places where the commodities subject to regulation under this act are sold, offered for sale or kept for sale, manufactured, transported, or stored or where the books, papers, records, or documents relative to those transactions are kept and may inspect and copy them at any place in this state.

(2) The department may sample, inspect, and test any of the commodities subject to this act, upon tendering payment for them, whether they originate at points outside the state or otherwise and whether they are in transport or at rest in places where they are to be sold.

History: En. 60-240 by Sec. 7, Ch. 77,
L. 1977.

60-241. Approved measure required for part delivery. Part of a compartment delivery may be made only by an approved, calibrated, and sealed meter or an approved measure. Gauge stick measurement is not permitted. All tank markers must be positioned and sealed as provided by the department.

ment. The department shall fix by rule fees for retesting meters or measuring devices or vehicle tanks used for distribution by petroleum or liquefied petroleum dealers and for any other special service rendered.

History: En. 60-241 by Sec. 8, Ch. 77,
L. 1977.

60-242. Full compartment sales—approval of meter. Full compartment sales or deliveries may only be made in a manner that shall be provided by the department by rule. All other sales or deliveries may only be made through a meter which has been approved, calibrated, and sealed by the department or by weight, unless otherwise provided by the department.

History: En. 60-242 by Sec. 9, Ch. 77,
L. 1977.

60-243. Dispensation and sale of petroleum products. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the same has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department's seal without written consent from the department;

(3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the department under 60-241;

(4) sell or deliver liquefied petroleum to a consumer, as a liquid or vapor, except as provided by 60-242;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or vapor the measurement of which has not been temperature corrected to 60° F by means of an automatic compensating device which has been approved, calibrated and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the commodities in all respects meet the tests and standards prescribed;

(7) sell, offer, or expose for sale any petroleum product which is adulterated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended.

History: En. 60-243 by Sec. 10, Ch. 77,
L. 1977.

60-244. Penalty for violations. A person who violates any of the provisions of this act or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall, for the first offense, be punished by a fine of not less than \$10 or more than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.

History: En. 60-244 by Sec. 11, Ch. 77,
L. 1977.

60-245. Injunction against violations. The department may apply to any court of competent jurisdiction for a temporary or permanent injunction, or both, restraining any person for violating any provision of this act or any rule promulgated by the department pursuant to this act.

History: En. 60-245 by Sec. 12, Ch. 77, L. 1977. **Repealing Clause**

Section 13 of Ch. 77, Laws 1977 read "Chapter 2 of Title 60, R.C.M. 1947, is repealed in its entirety."

CHAPTER 3—STATE MANUFACTURE AND SALE OF PETROLEUM PRODUCTS DECLARED PUBLIC PURPOSE

(Repealed—Section 103, Chapter 326, Laws of 1974)

60-301 to 60-306. (4192.1 to 4192.6) Repealed.

Repeal

Sections 60-301 to 60-306 (Secs. 1 to 6, Ch. 189, L. 1933), relating to state manu-

facture and sale of petroleum products as a public purpose, were repealed by Sec. 103, Ch. 326, Laws of 1974.

CHAPTER 6—INTERSTATE COMPACT FOR CONSERVATION OF OIL AND GAS AUTHORIZED

Section

60-606. Expenses of representative.

60-606. Expenses of representative. The representative or the assistant representative appointed by the governor of the state of Montana to the oil compact commission shall be allowed and paid his reasonable expenses while engaged in the performance of his official duties, and his expenses and all other expense incurred in connection with the interstate oil compact and the interstate oil compact commission shall be paid out of the board of oil and gas conservation revenue fund in accordance with the provisions of 60-145, as amended.

History: En. Sec. 6, Ch. 121, L. 1945; amd. Sec. 33, Ch. 39, L. 1977.

of oil and gas conservation revenue fund" for "oil conservation board fund"; substituted "60-145, as amended" for "60-121"; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "board

CHAPTER 8—UNDERGROUND GAS STORAGE RESERVOIRS

Section

60-801. Definitions.

60-802. Underground storage.

60-803. Eminent domain—use and limitations.

60-804. Certificate of board—publication.

60-805. Proceedings.

60-801. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Underground reservoir" means any subsurface sand, stratum or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

(2) "Natural gas" means gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel;

(3) "Native gas" means gas which has not been previously withdrawn from the earth;

(4) "Natural gas public utility" means any person, firm or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within or through this state for ultimate public use;

(5) "Board" means the board of oil and gas conservation provided for in section 82A-1508;

(6) "Underground storage" means the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir.

History: En. Sec. 1, Ch. 259, L. 1955; amd. Sec. 83, Ch. 253, L. 1974.

act"; substituted the definition of "board" in subdivision (5) for a former definition defining "commission" as the "oil and gas conservation commission of the state of Montana"; and made minor changes in style and phraseology.

Amendments

The 1974 amendment substituted the preliminary clause for "As used in this

60-802. Underground storage. (1) The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial and industrial consumers of this state, or which provides a better year-round market to the various gas fields, serves the public interest and welfare of this state.

(2) Therefore, in the manner hereinafter provided the board and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest.

History: En. Sec. 2, Ch. 259, L. 1955; amd. Sec. 84, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board" in subsection (2) for "commission"; and made minor changes in style.

60-803. Eminent domain—use and limitations. (1) A natural gas public utility may acquire through the exercise of the right of eminent domain as provided in this chapter for its use for the underground storage of natural gas an underground reservoir which the board finds is suitable and in the public interest for the underground storage of natural gas, and in connection with the underground reservoir the utility may acquire such other interests in property as may be required adequately to maintain and operate the underground reservoir facilities. The acquisition by the exercise of the right of eminent domain of underground reservoirs granted by this section is limited as follows:

(a) No sand, formation, or stratum which is producing or has produced, or which is capable of producing oil, is subject to appropriation under this section.

(b) No gas-bearing sand, formation, or stratum is subject to appropriation under this section, unless the recoverable volumes of native gas therein have all been produced or unless the sand, formation or stratum has a greater value or utility as an underground reservoir for the purpose of ensuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas, or for the conservation of natural gas, than for the production of the remaining relatively small volumes

of native gas as compared with the original volumes of natural gas therein. Gas, sand, formation or stratum may not be acquired under this chapter when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to the operator at the time of acquisition of the gas being used in the secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from the sand, formation or stratum at the time of its acquisition, if the operator was at that time entitled to the whole thereof, or if the operator was at that time entitled to less than the whole thereof, then not to exceed the quantity thereof to which the operator was then entitled.

(c) Only the area of the underground sand, formation or stratum as may reasonably be expected to be penetrated by gas displaced or injected into the underground gas storage reservoir may be appropriated.

(d) No rights or interests in existing underground gas reservoirs, being used for the injection, storage or withdrawal of natural gas, owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same, are subject to appropriation.

(2) The exercise of the right of eminent domain granted by this section shall be without prejudice to the rights of the owner of the lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in a manner that complies with orders and rules of the board issued for the purpose of protecting the underground reservoir against pollution and against the escape of natural gas therefrom, and shall be without prejudice to the rights of the owner of the lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with those rules or orders in order to protect the storage reservoir shall be paid by the natural gas public utility.

History: En. Sec. 3, Ch. 259, L. 1955; amd. Sec. 85, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board" in both subsections for "commission"; sub-

stituted "chapter" in the second sentence of subdivision (1)(b) for "act"; deleted "as defined in this act" in subdivision (1)(d) after the first reference to "public utility"; and made minor changes in style, punctuation and phraseology.

60-804. Certificate of board—publication. A natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the board a certificate setting out the findings of the board:

(a) that the underground sand, stratum or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest;

(b) the amount of native gas, if any, remaining therein and the portion thereof recoverable;

(c) and that the applicant has in good faith sought to acquire the rights sought under this chapter. The board may not issue the certificate until after a public hearing is had on the application, pursuant to notice

given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action.

History: En. Sec. 4, Ch. 259, L. 1955; amd. Sec. 86, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board" throughout the section for "commission"; substituted "rights sought under this chapter" in subdivision (c) for "rights sought hereunder"; deleted "as set forth in Chap-

ter 30, Title 93, Revised Codes of Montana of 1947, as amended, and the executive secretary of the commission shall for such purposes be vested with the same powers and charged with the same duties as the clerk of the district court has under said chapter" at the end of the section; and made minor changes in style, punctuation and phraseology.

60-805. Proceedings. A natural gas public utility having first obtained a certificate from the board desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided in this section. The natural gas public utility shall present to the district court of the county wherein the land is situated a complaint setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated and the names of the owners thereof as shown by the records of the county. The plaintiff shall file the certificate of the board as a part of its complaint and no order by the court granting the complaint shall be entered without the certificate being filed therewith. Subsequent proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, sections 93-9901 et seq.

History: En. Sec. 5, Ch. 259, L. 1955; amd. Sec. 87, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "board" throughout the section for "commission";

substituted "provided in this section" at the end of the first sentence for "hereinafter provided"; deleted "or to the judge thereof" in the second sentence before "a complaint"; and made minor changes in punctuation and phraseology.

CHAPTER 9—ABANDONED OIL AND GAS WELLS

Section

60-901. Notice required to surface owner—option of having pipe buried.

60-901. Notice required to surface owner—option of having pipe buried. No person shall plug and abandon an oil or gas well located within this state without first giving reasonable notice of his intention to do so to the surface owner of record of the land on which said well is located. Upon receipt of notice to plug and abandon, the surface owner may by written notice given within fifteen (15) days thereafter direct that the well pipe for said well shall be buried to a depth of not less than three (3) feet. The board of oil and gas conservation shall adopt regulations to implement this act.

History: En. 60-901 by Sec. 1, Ch. 161, L. 1974.

Title of Act

An act to require notice to surface

owner prior to plugging and abandoning oil or gas wells and providing the option to surface owner of having the well pipe buried.

TITLE 61—PARENT AND CHILD

Chapter

1. Parent and child—children by birth and by adoption, 61-104, 61-105, 61-109, 61-112.1, 61-112.2, 61-113, 61-117, 61-118, 61-122.
2. Adoption, 61-203, 61-205, 61-208, 61-209, 61-211, 61-213, 61-214.
3. Uniform Parentage Act, 61-301 to 61-316, 61-318 to 61-324, 61-327 to 61-334.
4. Uniform Child Custody Jurisdiction Act, 61-401 to 61-425.

CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

Section

- 61-104. Obligations of parents for the support and education of their children.
61-105. Custody, services, and earnings of child.
61-109. Allowance to parent.
61-112.1. Destruction of property by person under eighteen—liability of parents for.
61-112.2. Limitation on amount of recovery.
61-113. Remedy when parent dies without providing for support of child.
61-117. Married person not bound for the support of his spouse's children by a former marriage.
61-118. Compensation and support of person after attaining majority.
61-122. When custody may be awarded without dissolution proceedings.

61-103. (5832) Repealed.

Repeal

Section 61-103 (Sec. 282, Civ. C. 1895), relating to standing to dispute the legiti-

macy of a child, was repealed by Sec. 31, Ch. 512, Laws of 1975.

61-104. (5833) Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R. C. M. 1921; amd. Sec. 21, Ch. 293, L. 1975. Cal. Civ. C. Sec. 196. Field Civ. C. Sec. 89.

Amendments

The 1975 amendment inserted "or parents" after "parent"; and deleted the second sentence. For prior version, see parent volume.

61-105. (5834) Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child.

History: En. Sec. 284, Civ. C. 1895; re-en. Sec. 3742, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1915; re-en. Sec. 5834, R. C. M. 1921; amd. Sec. 26, Ch. 512, L. 1975; amd. Sec. 13, Ch. 33, L. 1977. Cal. Civ. C. Sec. 197. Based on Field Civ. C. Sec. 90.

Amendments

The 1975 amendment deleted "legitimate" before "unmarried minor child"; and made a minor change in phraseology.

The 1977 amendment inserted "of the child" at the end of both sentences; and made minor changes in phraseology and punctuation.

61-108. (5837) Repealed.

Repeal

Section 61-108 (Sec. 287, Civ. C. 1895), relating to the custody of an illegitimate

child, was repealed by Sec. 31, Ch. 512, Laws of 1975.

61-109. (5838) Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; amd. Sec. 14, Ch. 33, L. 1977. Cal. Civ. C. Sec. 201. Field Civ. C. Sec. 92.

Amendments

The 1977 amendment substituted "the child's" for "its" throughout the section; inserted "of the child" after "future support and education"; and made minor changes in phraseology and punctuation.

61-112.1. Destruction of property by person under eighteen—liability of parents for. Any municipal corporation, county, city, town, school district, or department of the state of Montana or any person or any religious organization, whether incorporated or unincorporated, is entitled to recover damages in a civil action in an amount not to exceed \$1,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, or department of the state of Montana or person or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977.

Amendments

The 1977 amendment increased the

amount of damage liability from \$300 to \$1,500; and made minor changes in phraseology, punctuation and style.

61-112.2. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed \$1,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed \$100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 61-112.1.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977.

Amendments

The 1971 amendment added the provi-

sion for an attorney's fee, including the second sentence.

The 1977 amendment increased the damage liability from \$300 to \$1,500; and made minor changes in phraseology and punctuation.

61-113. (5842) Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving the child chargeable to the county and leaving an estate sufficient for the child's support, the county commissioners of the county may claim provision for the child's support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent.

History: En. Sec. 292, Civ. C. 1895; re-en. Sec. 3750, Rev. C. 1907; re-en. Sec. 5842, R. C. M. 1921; amd. Sec. 15, Ch. 33, L. 1977. Cal. Civ. C. Sec. 205. Based on Field Civ. C. Sec. 96.

Amendments

The 1977 amendment substituted "the child's" for "its" throughout the section; and made minor changes in phraseology and punctuation.

61-115. (5844) When a parent is liable for necessities, etc.**Neglectful Parent**

The state could not rely on this statute to recover from defendant father, since this statute provides only for recovery from a neglectful parent and not from one who failed to make support payments pursuant to divorce decree. State, Department of Social & Rehabilitation Services v. Hultgren, — M —, 541 P 2d 1211.

Third Person

The state may be considered a third person pursuant to this section to recover the reasonable value of necessities from the parent who has neglected to provide the necessities. State, Department of Social & Rehabilitation Services v. Hultgren, — M —, 541 P 2d 1211.

61-117. (5846) Married person not bound for the support of his spouse's children by a former marriage. A married person is not bound to support his spouse's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

History: En. Sec. 296, Civ. C. 1895; re-en. Sec. 3754, Rev. C. 1907; re-en. Sec. 5846, R. C. M. 1921; amd. Sec. 22, Ch. 293, L. 1975. Cal. Civ. C. Sec. 209. Field Civ. C. Sec. 100.

Amendments

The 1975 amendment substituted "married person" and "spouse's children" for

"husband" and "wife's children"; and substituted "by a former marriage" for "by a former husband."

Repealing Clause

Section 23, Ch. 293, Laws 1975 read "Sections 36-102 and 36-121, R. C. M. 1947, are repealed."

61-118. (5847) Compensation and support of person after attaining majority. Where a person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: En. Sec. 297, Civ. C. 1895; re-en. Sec. 3755, Rev. C. 1907; re-en. Sec. 5847, R.C.M. 1921; amd. Sec. 16, Ch. 33, L. 1977. Cal. Civ. C. Sec. 210. Field Civ. C. Sec. 101.

Amendments

The 1977 amendment substituted "person" for "child" near the beginning of the section.

61-122. (5851) When custody may be awarded without dissolution proceedings. When a husband and wife live in a state of separation without the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require.

History: En. Sec. 301, Civ. C. 1895; re-en. Sec. 3759, Rev. C. 1907; re-en. Sec. 5851, R.C.M. 1921; amd. Sec. 17, Ch. 33, L. 1977. Cal. Civ. C. Sec. 214. Field Civ. C. Sec. 106.

Amendments

The 1977 amendment substituted "the

marriage being dissolved" for "being divorced"; deleted a former second sentence providing that the decision of the court was to be guided by the rules prescribed in section 91-4515; and made minor changes in punctuation.

CHAPTER 2—ADOPTION**Section**

61-203. Who may adopt.

61-205. Persons required to consent to the adoption.

- 61-208. Petition for adoption.
- 61-209. Investigation.
- 61-211. Interlocutory and final decree.
- 61-213. Confidential nature of record and proceedings.
- 61-214. Appeal.

61-202. Who may be adopted.

Jurisdiction

Tribal court has exclusive subject matter jurisdiction over petition for adoption of minor Indian child by two Indian adults, living on reservation. *Fisher v.*

District Court, — US —, — L Ed 2d —, 96 S Ct 943, reversing *State ex rel. Adoption of Firecrow v. District Court*, — M —, 536 P 2d 190.

61-203. Who may adopt. The following persons are eligible to adopt a child:

- (1) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.
- (2) An unmarried person who is at least eighteen (18) years old.
- (3) A married person at least eighteen (18) years old who is legally separated from the other spouse.
- (4) In the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973.

specified in subdivisions (2) and (3) from 21 to 19 years.

The 1973 amendment reduced the age specified in subdivisions (2) and (3) from 19 to 18 years.

Amendments

The 1971 amendment reduced the age

61-205. Persons required to consent to the adoption. An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

- (1) Both parents, if living, or the surviving parent, of a child; provided, that consent shall not be required from a father or mother,
 - (a) adjudged guilty by a court of competent jurisdiction of physical cruelty toward said child; or,
 - (b) adjudged to be an habitual drunkard; or,
 - (c) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,
 - (d) who has, in the state of Montana, or in any other state of the United States, willfully abandoned such child; or,
 - (e) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency, or the state department of social and rehabilitation services of the state of Montana for a period of one (1) year without contributing to the support of said child during said period, if able; or,
 - (f) if it is proven to the satisfaction of the court that said father or mother, if able, has not contributed to the support of said child during a period of one (1) year before the filing of a petition for adoption; or (an adoption of a child may be decreed when there have been filed written consents to adoption executed by).

(2) The legal guardian of the person of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,

(3) The executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated, or if both parents are dead, and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or,

(4) Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of social and rehabilitation services or of an agency, or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957; amd. Sec. 2, Ch. 199, L. 1961; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 27, Ch. 512, L. 1975.

Amendments

The 1974 amendment substituted "state department of social and rehabilitation services" throughout this section for "state department of public welfare."

The 1975 amendment deleted "legitimate" before "child" in subdivision (1); deleted a former subdivision (2) relating to illegitimate children; and renumbered subdivisions (3) to (5) as (2) to (4).

Absence of Consent

Evidence that minor child had been supported during preceding four years by its father and aunt and uncle did not warrant order authorizing adoption of child by aunt and uncle after father's death where mother did not give consent and there was no evidence mother was able and failed to give support during that period. In re Adoption of Biery, — M —, 522 P 2d 1377.

Habeas Corpus

Habeas corpus proceeding seeking cus-

tody of children is an equitable proceeding, and whether the action is treated as habeas corpus or a petition to set aside an adoption, the welfare of the child is the paramount factor. Conley v. Walden, — M —, 533 P 2d 955.

Judicial Ruling of Other States

In granting petition for adoption without consent of parents, Montana court was entitled to rely on ruling of Missouri court depriving parents of custody, and even though parents, five years later, persuaded the Missouri court to set aside its ruling, the Montana adoption was made in the best interests of the children and would not be set aside. Conley v. Walden, — M —, 533 P 2d 955.

Noncompliance

Mother, after executing affidavit of waiver and consent to adoption, could not effectively revoke that consent by letter addressed to county department of public welfare, without following the procedure prescribed by this section. Application of Hendrickson, 159 M 217, 496 P 2d 1115.

61-208. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of social and rehabilitation services. An additional copy shall be sent to any agency participating in the adoption proceeding.

(3) Any written consent required by this act may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

History: En. Sec. 8, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 18, Ch. 33, L. 1977.

Amendments

The 1974 amendment substituted "department of social and rehabilitation serv-

ices" for "department of public welfare."

The 1977 amendment inserted "An additional copy shall be sent" at the beginning of the third sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

61-209. Investigation. (1) Upon the filing of a petition for adoption the court shall order an investigation to be made by the state department of social and rehabilitation services or any other private agency licensed and approved for such investigatory purpose by the state department of social and rehabilitation services, unless such investigation is waived by the department of social and rehabilitation services, and shall in its discretion further order that a report of such investigation shall be filed with the court by the designated investigator within the time fixed by the court and in no event more than thirty (30) days from the issuance of the order for investigation, unless time therefor is extended by the court. Such investigation if ordered by the court shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) and (3) * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 2, Ch. 495, L. 1975.

Amendments

The 1974 amendment substituted "state department of social and rehabilitation services" for "state department of public welfare" throughout this section.

The 1975 amendment substituted "the court shall order an investigation" for

"the court may in its discretion order an investigation" near the beginning of subsection (1); inserted "unless such investigation is waived by the department of social and rehabilitation services" in the first sentence of subsection (1); substituted "shall" for "may" in the clause relating to the filing of a report of investigation with the court; and made minor changes in style.

61-211. Interlocutory and final decree. (1) Upon examination of the report described in 61-209, if such report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption; or on any parent whose consent to adoption is not required under the provisions of 61-205 or 61-325, and service of process shall not be made on any parent who has relinquished his child to the department of social and rehabilitation services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department of social and rehabilitation services and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of the child.

History: En. Sec. 11, Ch. 240, L. 1957; Ch. 2, L. 1963; amd. Sec. 48, Ch. 121, L. amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, 1974; amd. Sec. 19, Ch. 33, L. 1977.

Amendments

The 1974 amendment substituted "department of social and rehabilitation services" throughout this section for "department of public welfare."

The 1977 amendment inserted the subsection and subdivision designations; de-

leted "or on the father of an illegitimate child" after "consented in writing to an adoption" in subsection (5); inserted "or 61-325" in subsection (5); and made minor changes in phraseology, punctuation and style.

61-213. Confidential nature of record and proceedings. (1) and (2)

* * * [Same as parent volume.]

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the state department of social and rehabilitation services or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown.

History: En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974.

departments of public welfare, the state department of social and rehabilitation services" for "county and state departments of public welfare" in subsection (3).

Amendments

The 1974 amendment substituted "county

61-214. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder in the district court by any person aggrieved thereby, in the manner provided for appeals from the court in other civil matters.

History: En. Sec. 14, Ch. 240, L. 1957; amd. Sec. 20, Ch. 33, L. 1977.

for "to" before "the district court"; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "in"

CHAPTER 3—UNIFORM PARENTAGE ACT**Section**

- 61-301. Short title.
- 61-302. Parent and child relationship defined.
- 61-303. Relationship not dependent on marriage.
- 61-304. How parent and child relationship established.
- 61-305. Presumption of paternity.
- 61-306. Artificial insemination.
- 61-307. Determination of father and child relationship—who may bring action.
- 61-308. Statute of limitations.
- 61-309. Jurisdiction—venue.
- 61-310. Parties.
- 61-311. Pre-trial proceedings.
- 61-312. Blood tests.
- 61-313. Evidence relating to paternity.
- 61-314. Pre-trial recommendations.
- 61-315. Civil action.
- 61-316. Judgment or order.
- 61-318. Enforcement of judgment or order.
- 61-319. Modification of judgment or order.
- 61-320. Rights to counsel—free transcript on appeal.
- 61-321. Hearings and records—confidentiality.
- 61-322. Action to declare mother and child relationship.
- 61-323. Promise to render support.
- 61-324. Birth records.
- 61-327. Uniformity of application and construction.
- 61-328. Form, execution, and revocation of releases—termination of parents' or guardians' rights.
- 61-329. Children born out of wedlock—release—consent.

- 61-330. Notice of intent to claim paternity.
- 61-331. Expected child—intent to release or consent, petition and notice.
- 61-332. Proceeding to determine father's identity and terminate rights.
- 61-333. Grounds for termination of father's rights.
- 61-334. Best interests of the child—custody to father—legitimation.

61-301. Short title. This act may be cited as the "Uniform Parentage Act."

History: En. 61-301 by Sec. 1, Ch. 512, L. 1975.

Title of Act

An act to be known as the "Uniform Parentage Act" relating to matters concerning the parent-child relationship, its establishment and its termination; amending sections 61-105 and 61-205, R. C. M. 1947; and repealing sections 61-103, 61-108, 93-2901-1 through 93-2901-11, R. C. M. 1947.

61-302. Parent and child relationship defined. As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

History: En. 61-302 by Sec. 2, Ch. 512, L. 1975.

61-303. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

History: En. 61-303 by Sec. 3, Ch. 512, L. 1975.

61-304. How parent and child relationship established. The parent and child relationship between a child and

- (1) the natural mother may be established by proof of her having given birth to the child, or under this act;
- (2) the natural father may be established under this act;
- (3) an adoptive parent may be established by proof of adoption.

History: En. 61-304 by Sec. 4, Ch. 512, L. 1975.

61-305. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three

hundred (300) days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides, or

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

History: En. 61-305 by Sec. 5, Ch. 512,
L. 1975.

61-306. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

History: En. 61-306 by Sec. 6, Ch. 512,
L. 1975.

61-307. Determination of father and child relationship—who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to section 61-305.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 61-305 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 61-314 (2), between an alleged or presumed father and the mother or child, does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

History: En. 61-307 by Sec. 7, Ch. 512,
L. 1975.

61-308. Statute of limitations. (1) Limitation when father and child relationship is presumed.

(a) An action may be commenced at any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (a), (b), or (c) of section 61-305 (1); or

(b) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (a), (b), or (c) of section 61-305 (1) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five (5) years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Limitations when father-child relationship is not presumed. An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under section 61-305 may not be brought later than three (3) years after the birth of the child, or later than three (3) years after the effective date of this act, whichever is later. Sections 61-307 and 61-308 do not extend the time within which a right of inheritance or a right to a succession may be

asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

(3) After the conclusion of an adoption proceeding under chapter 2, Title 61, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced except as provided for in section 61-325 for fraud, and section 61-206, R. C. M. 1947.

History: En. 61-308 by Sec. 8, Ch. 512, L. 1975.

61-309. Jurisdiction—venue. (1) The district court has jurisdiction of an action brought under this act. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this act, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana rules of civil procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

History: En. 61-309 by Sec. 9, Ch. 512, L. 1975; amd. Sec. 21, Ch. 33, L. 1977.

deleted "including Rule 4B of the Montana Rules of Civil Procedure" after "rule or statute" in the second sentence of subsection (2); and made minor changes in punctuation and style.

Amendments

The 1977 amendment substituted "dissolution" for "divorce" in subsection (1);

61-310. Parties. The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of social and rehabilitation services or the appropriate county welfare department as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 61-305, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

History: En. 61-310 by Sec. 10, Ch. 512, L. 1975.

61-311. Pre-trial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

History: En. 61-311 by Sec. 11, Ch. 512,
L. 1975.

61-312. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases, the court shall determine the number and qualifications of the experts.

History: En. 61-312 by Sec. 12, Ch. 512,
L. 1975.

61-313. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

History: En. 61-313 by Sec. 13, Ch. 512,
L. 1975.

61-314. Pre-trial recommendations. (1) On the basis of the information produced at the pre-trial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of

the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in section 61-316 (5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or non-paternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father then the instant action shall be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

History: En. 61-314 by Sec. 14, Ch. 512,
L. 1975.

61-315. Civil action. (1) An action under this act is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Section 61-311, subsection (2) and sections 61-312 and 61-313 apply to all action brought under this act.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the

probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

History: En. 61-315 by Sec. 15, Ch. 512,
L. 1975.

61-316. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under section 61-324.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

- (a) the needs of the child;
- (b) the standard of living and circumstances of the parents;
- (c) the relative financial means of the parents;
- (d) the earning ability of the parents;
- (e) the need and capacity of the child for education, including higher education;
- (f) the age of the child;
- (g) the financial resources and the earning ability of the child;
- (h) the responsibility of the parents for the support of others; and
- (i) the value of services contributed by the custodial parent.

History: En. 61-316 by Sec. 16, Ch. 512,
L. 1975.

61-317. Repealed.**Repeal**

Section 61-317 (Sec. 17, Ch. 512, L. 1975), relating to costs in paternity ac-

tions, was repealed by Sec. 8, Ch. 422, Laws 1977.

61-318. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this act or under prior law the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

History: En. 61-318 by Sec. 18, Ch. 512, L. 1975.

61-319. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in section 61-316, subsections (3) and (4) and section 61-318 (2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 61-316 (4) may specify that the judgment or order may not be modified or revoked.

History: En. 61-319 by Sec. 19, Ch. 512, L. 1975.

61-320. Rights to counsel—free transcript on appeal. (1) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: En. 61-320 by Sec. 20, Ch. 512, L. 1975.

61-321. Hearings and records—confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-321 by Sec. 21, Ch. 512, L. 1975.

61-322. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. In so far as practicable, the provisions of this act applicable to the father and child relationship apply.

History: En. 61-322 by Sec. 22, Ch. 512, L. 1975.

61-323. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 61-307(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977. isor's request" for "provision's request" in subsection (2); and made minor changes in punctuation and style.

Amendments

The 1977 amendment substituted "prom-

61-324. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-324 by Sec. 24, Ch. 512, L. 1975.

61-325, 61-326. Repealed.

Repeal

Sections 61-325, 61-326 (Secs. 25, 28, Ch. 512, L. 1975), relating to child cus-

tomial proceedings, were repealed by Sec. 8, Ch. 422, Laws 1977.

61-327. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

History: En. 61-327 by Sec. 29, Ch. 512, L. 1975.

Separability Clause

Section 30 of Ch. 512, Laws 1975 read "If any provision of this act or the application thereof to any person or circum-

stance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Repealing Clause 103, and 61-108, R. C. M. 1947, are repealed."
 Section 31 of Ch. 512, Laws 1975 read
 "Sections 93-2901-1 through 93-2901-11, 61-

61-328. Form, execution, and revocation of releases—termination of parents' or guardians' rights. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by formally executing a release whereby all parental rights to the child are voluntarily relinquished to an agency of the state of Montana, a licensed adoption agency, or a person.

(2) Except as otherwise provided in this section, a release shall be by a separate instrument executed before a notary public.

(3) If the person from whom a release is required is a member of any of the armed services or is in prison, the release may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the release is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the release was executed in accordance with the laws of that state or country and may not proceed unless it finds that the release was so executed.

(5) Upon the filing of the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana, the licensed adoption agency, or the person to which the release was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of the person or persons who executed the release and of the agency of the state of Montana, licensed adoption agency, or person to which the child was released, the court with which the release was filed may grant a hearing to consider whether the release should be revoked. A release may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to a petition to revoke a release shall be made.

History: En. 61-328 by Sec. 1, Ch. 422, L. 1977. termination of the parental rights of children proposed to be released for adoption; repealing sections 61-317, 61-325, and 61-326, R.C.M. 1947; and providing an effective date.

Title of Act

An act to clarify the procedures for the

61-329. Children born out of wedlock—release—consent. (1) If the mother of a child born out of wedlock proposes to release the child for adoption and the release or consent of the natural father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this chapter, by the court pursuant to Title 10, chapter 13, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a release terminating her rights to the child. If the mother releases the child, the agency of the state of Montana, the licensed adoption agency, or the person to which the child is released may file a petition under this chapter or a petition of dependency or neglect pursuant to Title 10, chapter 13. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her formal execution of a release shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this chapter.

History: En. 61-329 by Sec. 2, Ch. 422,
L. 1977.

61-330. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 61-305 shall be presumed to be the father of the child for purposes of this chapter unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 61-307 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 10, chapter 13.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 61-305 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

History: En. 61-330 by Sec. 3, Ch. 422,
L. 1977.

61-331. Expected child—intent to release or consent, petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman

pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

- (a) her intent to release her expected child for adoption;
- (b) the approximate date and location of conception;
- (c) the expected date of her delivery; and
- (d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana rules of civil procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

- (a) indicate the approximate date and location of conception of the child and the expected date of delivery;
- (b) inform the putative father of his right under 61-330 to file a notice of intent to claim paternity before the birth of the child;
- (c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 61-330(3); and
- (d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 61-330(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

History: En. 61-331 by Sec. 4, Ch. 422,
L. 1977.

61-332. Proceeding to determine father's identity and terminate rights.

(1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 61-333 and 61-334. This section is not applicable if the father is a person whose consent to adoption is not required under 61-205.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The

court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabitating with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child. Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this act may be compelled to testify concerning, or to divulge the identity of, the father or possible father of that child.

(4) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana rules of civil procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 61-330 or 61-331;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 61-331(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(5) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(6) Proof of service of the notice of hearing required by subsection (4) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(7) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's

inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(8) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 61-331 or a notice required pursuant to 61-332(4) and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

History: En. 61-332 by Sec. 5, Ch. 422,
L. 1977.

61-333. Grounds for termination of father's rights. (1) If the court has proof that the person who it determines pursuant to 61-332 to be the father of the child was timely served with notice of intent to release pursuant to 61-331 or was served with or waived the notice of hearing required by 61-332(4), the court may permanently terminate the rights of the putative father if:

(a) the putative father submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) the putative father files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) the putative father was served with a notice of intent to release in accordance with 61-331(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) the putative father is given proper notice of hearing in accordance with subsection (4) or (6) of 61-332 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 61-332.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any

required notice, or lack of jurisdiction of the parties or of the subject matter.

History: En. 61-333 by Sec. 6, Ch. 422, L. 1977.

61-334. Best interests of the child—custody to father—legitimation.

(1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to which the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this chapter or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

History: En. 61-334 by Sec. 7, Ch. 422, L. 1977.

Effective Date

Section 9 of Ch. 422, Laws 1977 provided the act should be effective on its passage and approval. Approved April 19, 1977.

Repealing Clause

Section 8 of Ch. 422, Laws 1977 read: "Sections 61-317, 61-325, and 61-326, R.C.M. 1947, are repealed."

CHAPTER 4—UNIFORM CHILD CUSTODY JURISDICTION ACT

Section

- 61-401. Short title.
- 61-402. Purposes of act—construction of provisions.
- 61-403. Definitions.
- 61-404. Jurisdiction.
- 61-405. Notice and opportunity to be heard.
- 61-406. Notice to persons outside this state—submission to jurisdiction.
- 61-407. Simultaneous proceedings in other states.
- 61-408. Inconvenient forum.
- 61-409. Jurisdiction declined by reason of conduct.
- 61-410. Information under oath to be submitted to the court.
- 61-411. Additional parties.
- 61-412. Appearance of parties and the child.
- 61-413. Binding force and res judicata effect of custody decree.
- 61-414. Recognition of out-of-state custody decrees.
- 61-415. Modification of custody decree of another state.
- 61-416. Filing and enforcement of custody decree of another state.
- 61-417. Registry of out-of-state custody decrees and proceedings.
- 61-418. Certified copies of custody decree.
- 61-419. Taking testimony in another state.
- 61-420. Hearings and studies in another state—orders to appear.

- 61-421. Assistance to courts of other states.
- 61-422. Preservation of documents for use in other states.
- 61-423. Request for court records of another state.
- 61-424. International application.
- 61-425. Priority.

61-401. Short title. This act may be cited as the "Uniform Child Custody Jurisdiction Act".

History: En. 61-401 by Sec. 1, Ch. 537, L. 1977.

Title of Act _____

An act to avoid jurisdictional conflict between states in child custody proceed-

ings; providing interstate judicial assistance in custody cases to discourage illegal schemes to gain possession of a child in contested custody proceedings; amending sections 48-315 and 48-331, R.C.M. 1947.

61-402. Purposes of act—construction of provisions. (1) The general purposes of this act are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This act shall be construed to promote the general purposes stated in this section.

History: En. 61-402 by Sec. 2, Ch. 537, L. 1977.

61-403. Definitions. As used in this act, the following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 10, chapter 12, or Title 10, chapter 13.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

History: En. 61-403 by Sec. 3, Ch. 537,
L. 1977.

61-404. Jurisdiction. The jurisdictional provisions of 49-331 apply to this act.

History: En. 61-404 by Sec. 4, Ch. 537,
L. 1977.

61-405. Notice and opportunity to be heard. Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 61-406.

History: En. 61-405 by Sec. 5, Ch. 537,
L. 1977.

61-406. Notice to persons outside this state—submission to jurisdiction.
(1) Notice required for the exercise of jurisdiction over a person outside

this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: En. 61-406 by Sec. 6, Ch. 537,
L. 1977.

61-407. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 61-410 and shall consult the child custody registry established under 61-417 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 61-420 through 61-423. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise in-

form the other court to the end that the issues may be litigated in the more appropriate forum.

History: En. 61-407 by Sec. 7, Ch. 537,
L. 1977.

61-408. Inconvenient forum. (1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

- (a) if another state is or recently was the child's home state;
- (b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- (c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- (d) if the parties have agreed on another forum which is no less appropriate; and
- (e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 61-402.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other

expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History: En. 61-408 by Sec. 8, Ch. 537,
L. 1977.

61-409. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: En. 61-409 by Sec. 9, Ch. 537,
L. 1977.

61-410. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: En. 61-410 by Sec. 10, Ch. 537,
L. 1977.

61-411. Additional parties. If the court learns from information furnished by the parties pursuant to 61-410 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 61-406.

History: En. 61-411 by Sec. 11, Ch. 537,
L. 1977.

61-412. Appearance of parties and the child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under 61-406 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

History: En. 61-412 by Sec. 12, Ch. 537,
L. 1977.

61-413. Binding force and res judicata effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 61-404 binds all parties who have been served in this state or notified in accordance with 61-406 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact

decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

History: En. 61-413 by Sec. 13, Ch. 537,
L. 1977.

61-414. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

History: En. 61-414 by Sec. 14, Ch. 537,
L. 1977.

61-415. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 61-409 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 61-423.

History: En. 61-415 by Sec. 15, Ch. 537,
L. 1977.

61-416. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History: En. 61-416 by Sec. 16, Ch. 537,
L. 1977.

61-417. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: En. 61-417 by Sec. 17, Ch. 537,
L. 1977.

61-418. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: En. 61-418 by Sec. 18, Ch. 537,
L. 1977.

61-419. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: En. 61-419 by Sec. 19, Ch. 537,
L. 1977.

61-420. Hearings and studies in another state—orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: En. 61-420 by Sec. 20, Ch. 537,
L. 1977.

61-421. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear

custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: En. 61-421 by Sec. 21, Ch. 537,
L. 1977.

61-422. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

History: En. 61-422 by Sec. 22, Ch. 537,
L. 1977.

61-423. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 61-422.

History: En. 61-423 by Sec. 23, Ch. 537,
L. 1977.

61-424. International application. The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

History: En. 61-424 by Sec. 24, Ch. 537,
L. 1977.

61-425. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this act shall be given calendar priority and handled expeditiously.

History: En. 61-425 by Sec. 25, Ch. 537,
L. 1977.

TITLE 62—PARKS AND PUBLIC RECREATION

Chapter

1. County parks and recreational areas, 62-102.
3. State parks, 62-301, 62-304 to 62-307, 62-310, 62-311, 62-314.
5. Horse racing, 62-502 to 62-511, 62-514, 62-515.
6. Open-Space Land and Voluntary Conservation Easement Act, 62-601 to 62-605, 62-608, 62-610 to 62-616, 62-618.
7. Card Games Act—bingo and raffles law—sports pools, 62-701 to 62-736.

CHAPTER 1—COUNTY PARKS AND RECREATIONAL AREAS

Section

62-102. Use of land—limitation of expenditures.

62-102. (4444.2) Use of land—limitation of expenditures. All tracts of land acquired under this act shall be set aside and used exclusively for public camping and recreational purposes, and each park so established shall be given an appropriate name or number. Except as otherwise provided by law, there are no restrictions on expenditures for the purpose of acquiring, maintaining and equipping county parks.

History: En. Sec. 2, Ch. 51, L. 1929; amd. Sec. 1, Ch. 137, L. 1935; amd. Sec. 1, Ch. 129, L. 1943; amd. Sec. 1, Ch. 115, L. 1945; amd. Sec. 1, Ch. 229, L. 1959; amd. Sec. 1, Ch. 75, L. 1974.

general fund of the county for the purpose of maintaining parks as herein provided"; and inserted "maintaining" after "acquiring" near the end of the section.

Effective Date

Amendments.

The 1974 amendment deleted a second sentence reading "No county shall be authorized to expend to exceed five thousand dollars (\$5,000.00) per annum out of the

Section 2 of Ch. 75, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

CHAPTER 2—CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS, PARKS AND RECREATIONAL FACILITIES

62-205. (5163) Funds—how disbursed.

Indirect Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among

various city departments using the facility, including the park department. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

CHAPTER 3—STATE PARKS

Section

- 62-301. Purpose.
- 62-304. Powers and duties.
- 62-305. Disposal of fees and charges.
- 62-306. Rules.
- 62-307. Connecting roads.
- 62-310. Establishment of state scientific and recreational park.
- 62-311. Rules governing use.
- 62-314. Penalties for violation of state park rules.

62-301. Purpose. For the purpose of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and pro-

viding for their use and enjoyment, thereby contributing to the cultural, recreational, and economic life of the people and their health, the department of fish and game (hereinafter referred to as department) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939; amd. Sec. 1, Ch. 178, L. 1953; amd. Sec. 1, Ch. 69, L. 1965; amd. Sec. 1, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted "That" at the beginning of the section; deleted "of" before "providing"; and made minor changes in punctuation.

62-304. Powers and duties. The department shall make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state, and may by purchase, lease, agreement, acceptance of donations, or condemnation acquire for the state any areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The department may in its discretion accept in the name of the state, in fee or otherwise, any areas, sites, or objects conveyed, entrusted, donated, or devised to the state. It may in its discretion accept gifts, grants, bequests, or contributions of money or other property to be spent or used for any of the purposes of sections 62-301 through 62-308. A contract may not be entered into or other obligation incurred until moneys have been appropriated by the legislature or are otherwise available. The department also has jurisdiction, custody, and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments, except wayside camps and other public conveniences acquired, improved, and maintained by the department of highways and contiguous to the state highway system. The department may designate lands under its control as state parks, state historical sites, state monuments, or by any other designation it considers appropriate, remove or change the designation of any area or portion, and name or change the name of any area as designated. The department may lease those portions of designated lands which are necessary for the proper administration of these lands in keeping with the basic purpose of sections 62-301 through 62-308.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969; amd. Sec. 49, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977.

tions 62-301 through 62-308" for "this act" at the end of the third sentence; substituted "department of highways" for "state highway system" at the end of the fourth sentence; and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment substituted "sec-

62-305. Disposal of fees and charges. (1) The department shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable, except as provided in subsection (2). All moneys derived from the activities of the department shall be deposited in the state treasury in the earmarked revenue fund to the credit of the department.

(2) Any Montana resident as defined in 26-202.3 who is 65 years of age or older may purchase a "Montana state golden years pass" for \$1

which, when attached to his or her vehicle, allows the passengers of that vehicle to camp free in Montana state parks, recreation areas, and fishing access sites. This pass is valid for the lifetime of the individual.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963; amd. Sec. 1, Ch. 87, L. 1967; amd. Sec. 1, Ch. 415, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment added "except as provided in subsection (2)" at the end of the first sentence of subsection (1); and added subsection (2).

62-306. Rules. The department may make rules governing the use, occupancy, and protection of the lands and property under its control.

History: En. Sec. 6, Ch. 48, L. 1939; amd. Sec. 2, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

lations" after "rules"; deleted a second sentence which provided penalties; and made minor changes in phraseology and punctuation. For prior version, see parent volume.

Amendments

The 1977 amendment deleted "and regu-

62-307. Connecting roads. The department of highways may construct, improve, and maintain with state highway funds connecting roads between existing state highways and state parks. Each road shall not exceed a total length of ten (10) miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965; amd. Sec. 50, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted "department of highways" for "state highway commission" at the beginning of the first sentence; and made minor changes in style, phraseology and punctuation.

62-308. Co-operation.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substi-

tuted "department" for "commission" in this section.

62-309. Repealed.

Repeal

Section 62-309 (Sec. 9, Ch. 48, L. 1939), relating to reports of the state fish and

game commission, was repealed by Sec. 58, Ch. 511, Laws 1973.

62-310. Establishment of state scientific and recreational park. In order to preserve and protect the biological station grounds hereafter referred to and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the department is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding 15 acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965; amd. Sec. 3, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted "That" at the beginning of the section; and made minor changes in punctuation and style.

62-311. Rules governing use. The department shall make such rules governing the park's use, occupancy, and the protection of the remaining

lands of the grant as necessary to promote and continue the use of all of the lands for biological station purposes. The park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area. Nothing herein contained prevents the use of the area within the park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965; amd. Sec. 4, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment deleted "and regulations" after "rules" near the beginning of the first sentence; and made minor changes in phraseology and punctuation.

62-314. Penalties for violation of state park rules. Any person who injures or damages any land or property under control of the department or private property thereon or therein or violates any of the rules made by the department relating to these areas is guilty of a misdemeanor and shall be fined not more than \$500 or be imprisoned in the county jail for not more than 6 months.

History: En. Sec. 3, Ch. 111, L. 1929; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965; amd. Sec. 5, Ch. 2, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment substituted "land

or property under control of the [department]" for "state"; substituted "rules" for "regulations"; substituted "these areas" for "the state parks"; and made minor changes in phraseology and style.

CHAPTER 4—DEVELOPMENT OF OUTDOOR RECREATIONAL RESOURCES

62-401 to 62-403.

Compiler's Notes

Section 13, Ch. 417, Laws 1977, substituted references to the department of fish

and game in these sections for references to the Montana state fish and game commission.

62-404. Repealed.

Repeal

Section 62-404 (Sec. 4, Ch. 235, L. 1965), relating to the outdoor recreation

advisory and planning committee, was repealed by Sec. 58, Ch. 511, Laws 1973.

CHAPTER 5—HORSE RACING

Section

62-501. [Transferred.]

62-502. Definitions.

62-503. Chairman—quorum—costs—salary.

62-504. Department's report—public record.

62-505. Duties of board, department, and licensees—license fee.

62-506. Authority of board.

62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing.

62-508. Penalty for violations of law—authority of board.

62-509. Race exclusively for Montana bred horses—bonus for winner.

62-510. Public liability insurance.

62-511. Parimutuel betting—other betting illegal.

62-514. Gross receipts—department's percentage—collection and allocation.

62-515. Deposit of unclaimed money.

62-501. [Transferred.]**Compiler's Notes**

Section 12, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.13.

62-502. Definitions. Unless the context requires otherwise in this chapter:

- (1) "Board" means the board of horse racing, provided for in section 82A-1602.13.
- (2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.
- (3) "Persons" means individuals, firms, corporations and associations.
- (4) "Race meet" means an exhibition of thoroughbred, purebred, or registered horse racing where the parimutuel system of wagering is used.

History: En. Sec. 2, Ch. 196, L. 1965; amd. Sec. 13, Ch. 350, L. 1974.

ing "Singular shall include the plural and plural shall include the singular; and words importing one gender shall be regarded as including all other genders"; renumbered the definitions; and made minor changes in phraseology. For prior version, see parent volume.

Amendments

The 1974 amendment inserted the first two definitions; deleted the former definition of "commission"; deleted from the end of the last definition a sentence read-

62-503. Chairman—quorum—costs—salary. (1) The board shall organize by electing one of its members chairman. Three members of the board shall constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this act.

(3) Each member may be paid \$25 for each day in which he is actually and necessarily engaged in the performance of board duties and shall be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incurred in his official service.

History: En. Sec. 3, Ch. 196, L. 1965; amd. Sec. 1, Ch. 213, L. 1973; amd. Sec. 2, Ch. 457, L. 1973; amd. Sec. 14, Ch. 350, L. 1974; amd. Sec. 9, Ch. 453, L. 1977.

section designations; and made minor changes in phraseology.

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (3) for "actual and necessary expenses"; and made minor changes in phraseology, punctuation and style.

Amendments

Chapter 213, Laws of 1973, substituted "board" for "commission" throughout the section; and added the third paragraph.

Chapter 457, Laws of 1973, substituted "board" for "commission" throughout the section; increased the number of members constituting a quorum from two to three; and made minor changes in style.

The 1974 amendment inserted the sub-

Effective Date

Section 2 of Ch. 213, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

62-504. Department's report—public record. (1) The department shall keep detailed records of board meetings and of the business transacted at the meetings, and licenses applied for and issued.

(2) Records of the board kept by the department are public records, subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965; amd. Sec. 17, Ch. 93, L. 1969; amd. Sec. 15, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "depart-

ment" throughout the section for "commission"; deleted "The commission shall report as provided in section 82-4002" at the end of subsection (1); inserted "kept by the department" in subsection (2); and made minor changes in phraseology.

62-505. Duties of board, department, and licensees—license fee. The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following: definitions, auditing, and supervision of the parimutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have anything to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interest of breeding and racing in this state, and the veterinary practices and standards which must be observed in connection with race meets. A person who participates in a race meet shall be licensed and charged an annual fee not to exceed \$15, which shall be paid to the department and used for expenses of the board, subject to section 82A-1603(6). Each person holding a license under this chapter, and every owner, trainer, jockey, and attendant at a race course in this state, shall comply with this chapter and with the rules adopted and orders issued by the board.

History: En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967; amd. Sec. 16, Ch. 350, L. 1974; amd. Sec. 1, Ch. 533, L. 1977.

Amendments

The 1974 amendment substituted "board" at the beginning of the section for "commission"; deleted "and regulations" after "rules" throughout the section; deleted a former third sentence reading "Rules pertaining to medication, testing of horses, examining horses prior to racing, and banning horses from running shall meet the

approval of an advisory committee of the Montana veterinary medical association"; substituted "department" and "board" in the present third sentence for "commission"; added "subject to section 82A-1603(6)" to the end of the third sentence; substituted "chapter" in two places in the last sentence for "act"; substituted "board" at the end of the last sentence for "commission"; and made minor changes in phraseology.

The 1977 amendment increased the annual fee from \$10 to \$15.

62-506. Authority of board. The board shall, subject to sections 82A-1603 and 82A-1604, license, regulate, and supervise all race meets held in this state under this chapter and shall have the places where race meets are held visited and inspected at least once a year.

History: En. Sec. 6, Ch. 196, L. 1965; amd. Sec. 17, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board"

for "commission created by this act"; inserted "subject to sections 82A-1603 and 82A-1604"; substituted "chapter" for "act"; and made minor changes in phraseology.

62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing. (1) It is unlawful for a person to hold a race meet in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet, under this chapter, shall file an application with the department which shall set forth the time, place, and number of days the license will continue, and other information the board requires.

(2) A person who has been convicted of a crime involving moral turpitude may not be issued a license of any kind, nor may a license be issued to a person who has violated this chapter or the rules of the board, or who has failed to pay the fees, taxes, or moneys required under this chapter.

(3) Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within thirty (30) days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(4) The board shall require that a fair board conducting race meets in conjunction with its regularly scheduled fair shall meet the requirements of the rules adopted by the board before granting a license. An unexpired license held by a person who violates this chapter, or who fails to pay to the department the sums required under this chapter, is subject to cancellation and revocation by the board.

History: En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967; amd. Sec. 18, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" and "board" throughout the section for "commission" and "racing commission"; substituted "chapter" throughout the section for "act"; deleted "and regulations" throughout the section after "rules"; substituted "fair board" near the beginning of subsection (4) for "fairs"; deleted

from the end of subsection (4) a sentence reading "Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation"; inserted the subsection designations; and made minor changes in punctuation and phraseology.

62-508. Penalty for violations of law—authority of board. (1) A person holding a race meet, and an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board may exclude from race courses in this state a person who the board considers detrimental to the best interest of racing.

(3) The board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed \$500, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein.

It is lawful to conduct race meets at a race track or otherwise, at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965; amd. Sec. 1, Ch. 183, L. 1974; amd. Sec. 19, Ch. 350, L. 1974; amd. Sec. 1, Ch. 306, L. 1977.

Amendments

Chapter 183, Laws of 1974, substituted "board" for "commission" throughout the section; deleted "willfully" in subsection (1) before "violating"; deleted "or any person who willfully violates any of the

provisions of this act or any rule, regulation, or order of the commission" at the end of subsection (2); inserted subsection (3) and the first paragraph of subsection (4); and made minor changes in style, punctuation and phraseology.

Chapter 350, Laws of 1974, substituted "under this chapter" in subsection (1) for "by the commission"; substituted "chapter" for "act" near the end of subsection (1); substituted "board" for "commission"

throughout subsection (2); and made minor changes in style and phraseology.

The 1977 amendment substituted "licensee" for "person" in two places in subsection (3); substituted "and assess a fine" in subsection (3) for "or assess a fine"; deleted "regulation" after "rule" in subsection (3); added the second sentence to subsection (3); substituted "rules" in sub-

section (4) for "regulations"; and made minor changes in punctuation and style.

Effective Date

Section 2 of Ch. 183, Laws of 1974 provided the act should be in effect from and after its passage and approval. Approved March 12, 1974.

62-509. Race exclusively for Montana bred horses—bonus for winner.

(1) For the purpose of encouraging the breeding, in this state, of valuable thoroughbred, purebred, quarter horse, appaloosa, or registered horses, at least one race each day at each race meet shall be limited to horses bred in this state. If, in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

(2) A sum equal to 10% of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

History: En. Sec. 9, Ch. 196, L. 1965; amd. Sec. 20, Ch. 350, L. 1974; amd. Sec. 2, Ch. 306, L. 1977.

The 1977 amendment added the last sentence to subsection (2); and made minor changes in style.

Amendments

The 1974 amendment substituted "board" in subsection (1) for "commission"; and made minor changes in style, punctuation and phraseology.

Effective Date

Section 3 of Ch. 306, Laws 1977 provided the act should be effective on its passage and approval. Approved April 5, 1977.

62-510. Public liability insurance. For the protection of the public, exhibitors, and visitors, a person licensed to conduct a race meet under this chapter shall carry public liability insurance in an amount and form of contract approved by the board.

History: En. Sec. 10, Ch. 196, L. 1965; amd. Sec. 3, Ch. 216, L. 1967; amd. Sec. 21, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act"; substituted "board" for "commission"; and made minor changes in punctuation and phraseology.

62-511. Parimutuel betting—other betting illegal. (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted by the licensee at the race meet, if the parimutuel system is conducted under this chapter and the rules of the board.

(3) It is unlawful to conduct pool selling, bookmaking, or to circulate handbooks, or to bet or wager on a race of a licensed race meet, other than by the parimutuel system, and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

History: En. Sec. 11, Ch. 196, L. 1965; amd. Sec. 4, Ch. 216, L. 1967; amd. Sec. 22, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "chap-

ter" for "act" throughout the section; substituted "board" for "commission" throughout the section; and made numerous changes in style, punctuation and phraseology.

62-514. Gross receipts—department's percentage—collection and allocation. The licensee shall pay to the department one per cent (1%) of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within five (5) days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter.

History: En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967; amd. Sec. 23, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" throughout the section for "com-

mission"; substituted "chapter" at the end of the last sentence for "act"; deleted "No expenditure shall be made until the commission has audited and approved the claim" at the end of the section; and made minor changes in phraseology.

62-515. Deposit of unclaimed money. Each licensee holding a horse race meeting shall within thirty (30) days of the end of the meeting pay to the department of professional and occupational licensing for deposit in the earmarked revenue fund for the board of horse racing all unclaimed winning ticket money from any parimutuel pool.

History: En. 62-515 by Sec. 1, Ch. 199, L. 1974.

Title of Act

An act to require licensees conducting horse race meetings to pay to the department of professional and occupational licensing for deposit in the earmarked revenue fund of the board of horse racing

all unclaimed winning ticket money within thirty (30) days of the close of the meeting; and providing for an effective date.

Effective Date

Section 2 of Ch. 199, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 12, 1974.

CHAPTER 6—OPEN-SPACE LAND AND VOLUNTARY CONSERVATION EASEMENT ACT

Section

- 62-601. Short title.
- 62-602. Purposes of act.
- 62-603. Definitions.
- 62-604. Acquisition and designation of real property by public body.
- 62-605. Conversion or diversion of open-space land, where prohibited—substitution of other realty—conveyance or lease of open-space land authorized.
- 62-608. Taxation of property subject to conservation easement.
- 62-610. Easements—type allowed.
- 62-611. Acquisition of conservation easements by qualified private organizations.
- 62-612. Conservation easements run with the land—enforceability.
- 62-613. Assignability.
- 62-614. Review by local planning authority.
- 62-615. Recording and description of land.
- 62-616. Enforcement.
- 62-618. Construction.

62-601. Short title. This act may be cited as the "Open-Space Land and Voluntary Conservation Easement Act."

History: En. Sec. 1, Ch. 337, L. 1969;
amd. Sec. 1, Ch. 489, L. 1975.

Amendments

The 1975 amendment substituted the present title for "Open-Space Land Act."

62-602. Purposes of act. The legislature finds that the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments; that the present and future rapid population growth in urban areas is creating severe problems of urban and suburban living; that this population spread and its attendant development is disrupting and altering the remaining natural areas, biotic communities, geological and geographical formations and, thereby, providing the potential for the destruction of scientific, educational, aesthetic, and ecological values; that the present and future rapid population spread throughout the state of Montana into its open spaces, are creating serious problems of lack of open space and overcrowding of the land; that to lessen congestion and to preserve natural, ecological, geographical and geological elements, the provision and preservation of open-space lands are necessary to secure park, recreational, historic and scenic areas and to conserve the land, its biotic communities, its natural resources, and its geological and geographic elements in their natural state; that the acquisition or designation of interests and rights in real property by certain qualifying private organizations and by public bodies to provide or preserve open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; and that the exercise of authority to acquire or designate interests and rights in real property to provide or preserve open-space land and the expenditure of public funds for these purposes would be for a public purpose; and that the statutory provision enabling certain qualifying private organizations to acquire interests and rights in real property to provide or preserve open-space land is in the public interest.

In accordance with these findings, the legislature states that the purposes of this act are to authorize and enable public bodies and certain qualifying private organizations voluntarily to provide for the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic or educational interest, and to provide for the preservation of other significant open-space land anywhere in the state either in perpetuity or for a term of years, and, furthermore to encourage private participation in such a program by establishing the policy to be utilized in determining the property tax to be levied upon the real property which is subject to the provisions of this act.

History: En. Sec. 2, Ch. 337, L. 1969;
amd. Sec. 2, Ch. 489, L. 1975.

Amendments

The 1975 amendment rewrote this section. For prior version, see parent volume.

62-603. Definitions. The following terms whenever used or referred to in this act shall have the following meanings unless a different meaning is clearly indicated by the context:

(a) and (b) * * * [Same as parent volume.]

(c) "Open-space land" means any land which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

(d) "Comprehensive planning" means planning for development and shall include: (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development; (2) programming and financing plans for capital improvements; (3) co-ordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (4) preparation of regulatory and administrative measures in support of the foregoing.

(e) "Conservation easement" means an easement or restriction running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of such easement or restriction, any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than fifteen (15) years. An easement granted for a term of years may be renewed for a term of fifteen (15) or more years upon the execution of a new granting instrument by the parties. A conservation easement may be applied to urban or nonurban land.

(f) "Qualified private organization" means a private organization: (1) competent to own interests in real property, and; (2) which qualifies and holds a general tax exemption under the Federal Internal Revenue Code, section 501 (c) and; (3) whose organizational purposes are designed to further the purposes of this act.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975.

ban area" after "any land" in subdivision (c); deleted "of an urban area" after "development" in subdivision (d); and added subdivisions (e) and (f).

Amendments

The 1975 amendment deleted "in an ur-

62-604. Acquisition and designation of real property by public body. To carry out the purposes of this act, any public body may (1) acquire by purchase, gift, devise, bequest or grant title to or any interests or rights in real property, including land and water, that will provide a means for the preservation or provision of significant open-space land, or the preservation of native plants or animals, or biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest, or both, (2) designate any real property, including land and water, in which it has an interest to be retained and used for the preservation and provision of significant open-space land; or the preservation of native plants or

animals, or biotic communities, or geological or geographic formations of scientific, aesthetic, or educational interests, or both.

Where a public body acquires under this act an interest in land less than fee, this acquisition shall be by conservation easement. Public bodies holding conservation easements shall enforce the provisions of these easements.

History: En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975.

Amendments

The 1975 amendment inserted "including land and water" after "real property" in the first paragraph; substituted "significant" for "permanent" before "open space land" in the first paragraph; in-

serted provisions for the preservation of plants, animals, and formations; deleted a concluding sentence in the first paragraph requiring that real property used for permanent open-space land conform to comprehensive planning; and added the second paragraph. For prior version, see parent volume.

62-605. Conversion or diversion of open-space land, where prohibited—substitution of other realty—conveyance or lease of open-space land authorized. (1) No open-space land, the title to, or interest or right in which has been acquired under this act shall be converted or diverted from open-space land use unless the conversion or diversion is: (a) necessary to the public interest; (b) not in conflict with the program of comprehensive planning for the area; and (c) permitted by the conditions imposed at the time of the creation of the conservation easement. Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as open-space land shall be substituted within a reasonable period not exceeding one (1) year for any real property converted or diverted from open-space land use. Property substituted is subject to the provisions of this act.

(2) A grantee may convey or lease any real property it has acquired or which has been designated for the purposes of this act. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land and which are consistent with the express terms and conditions of the grant, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection (1) of this section.

History: En. Sec. 5, Ch. 337, L. 1969; amd. Sec. 5, Ch. 489, L. 1975.

Amendments

The 1975 amendment redesignated subsections (a) and (b) as (1) and (2); deleted "or which has been designated as open-space land under the authority of this act" before "shall be converted" in subsection (1); substituted item (a) in subsection (1) for "essential to the orderly development and growth of the urban area"; substituted item (b) of subsection (1) for "in accordance with the program

of comprehensive planning for the urban area in effect at the time of conversion or diversion"; inserted item (c) of subsection (1); deleted "permanent" before "open-space land" in subsection (1); deleted "The public body shall assure that" from the beginning of the last sentence of subsection (1); substituted "grantee" for "a public body" at the beginning of subsection (2); inserted "and which are consistent with the express terms and conditions of the grant" in the second sentence in subsection (2); and made minor changes in phraseology.

62-608. Taxation of property subject to conservation easement. Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years where a public body or a qualify-

ing private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than fifteen (15) days after the date of expiration.

History: En. Sec. 8, Ch. 337, L. 1969;
amd. Sec. 6, Ch. 489, L. 1975.

Amendments

The 1975 amendment completely rewrote this section. For prior version, see parent volume.

62-610. Easements—type allowed. Easement or restrictions under this act may prohibit or limit any or all of the following:

(1) Structures. Construction or placing of buildings, camping trailers, house trailers, mobile homes, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(2) Landfill. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials.

(3) Vegetation. Removal or destruction of trees, shrubs or other vegetation.

(4) Loam, gravel, etc. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substance.

(5) Surface use. Surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition.

(6) Acts detrimental to conservation. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation or fish and wildlife habitat and preservation.

(7) Subdivision of land. Subdivision of land as defined in section 11-3861.

(8) Other acts. Other acts or uses detrimental to such retention of land or water areas in their existing conditions.

(9) The term "land" in subsections (2) and (3) above, includes land under water, and water, and water surface.

History: En. 62-610 by Sec. 7, Ch. 489,
L. 1975.

Act and providing for conservation easements; amending sections 62-601, 62-602, 62-603, 62-604, 62-605, 62-608, 67-601, and 67-602, R. C. M. 1947.

Title of Act
An act amending the Open-Space Land

62-611. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a

conservation easement, by purchase or gift, devise, bequest, or grant, title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, or biotic communities, or geological or geographic formations of scientific, aesthetic, or educational interest.

History: En. 62-611 by Sec. 8, Ch. 489,
L. 1975.

62-612. Conservation easements run with the land—enforceability. The provisions of sections 58-305, 58-306, and 58-307, notwithstanding, for the purposes of this act, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership and no conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement, or because such easement is an easement in gross.

History: En. 62-612 by Sec. 9, Ch. 489,
L. 1975.

62-613. Assignability. For the purposes of this act, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise, and no conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership; provided that the assignees must be qualified under the terms of this act to hold a conservation easement.

History: En. 62-613 by Sec. 10, Ch. 489,
L. 1975.

62-614. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review by the appropriate local planning authority for the county within which the land lies prior to recording. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have ninety (90) days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee, but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority, or the local planning authority has indicated in writing it will have no comments, or ninety (90) days have elapsed, whichever first occurs.

History: En. 62-614 by Sec. 11, Ch. 489,
L. 1975.

62-615. Recording and description of land. All conservation easements shall be duly recorded in the county where the land lies so as to effect their titles in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries. The county clerk and recorder shall upon recording cause a copy of the conservation easement to be placed in a separate file within the office of the county clerk and recorder and shall cause a copy of the conservation easement to be mailed to the state department of revenue.

History: En. 62-615 by Sec. 12, Ch. 489,
L. 1975.

62-616. Enforcement. Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

History: En. 62-616 by Sec. 13, Ch. 489,
L. 1975.

62-617. [Transferred from 67-609.]

Compiler's Notes

This section was originally numbered 67-609. Section 15, Ch. 489, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here, but may be found in the parent volume as sec. 67-609.

62-618. Construction. This section shall not be construed to imply that any easement, covenant, condition or restriction which does not have the benefit of this act shall on account of any provisions hereof be unenforceable. Nothing in this act shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

History: En. 62-618 by Sec. 14, Ch. 489,
L. 1975.

CHAPTER 7—CARD GAMES ACT—BINGO AND RAFFLES LAW— SPORTS POOLS

Section

- 62-701. Short title.
- 62-702. Definitions.
- 62-703. Unauthorized card games prohibited.
- 62-704. Prizes not to exceed one hundred dollars (\$100).
- 62-705. Rules of play to be posted—rake-off approved.
- 62-706. Gambling on cash basis.
- 62-707. Local governing bodies may issue licenses.
- 62-708. Governing body may establish regulations.
- 62-709. Minors may not participate.
- 62-710. Cheating unlawful.
- 62-711. Peace officers to enforce act.
- 62-712. Penalty for violation of act.
- 62-713. Jurisdiction.
- 62-714. Prior laws still in effect.
- 62-715. Short title.
- 62-715.1. Bingo and raffles authorized.

- 62-716. Definitions.
- 62-717. Restrictions on bingo and raffles.
- 62-718. No raffle drawing before thirty (30) days or after ninety (90) days.
- 62-719. Local governing bodies may issue licenses.
- 62-720. Governing body may establish regulations.
- 62-721. Minors not to participate.
- 62-722. Peace officers to enforce act.
- 62-723. Penalty for violation of act.
- 62-724. Gambling on cash basis.
- 62-725. Cheating unlawful.
- 62-726. Bingo and raffles exempt from prior law.
- 62-727. Sports pools defined—rules.
- 62-727.1. Sports pools authorized.
- 62-728. Transportation exempt from federal law.
- 62-729. Gambling on cash basis.
- 62-730. Minors may not participate.
- 62-731. Cheating unlawful.
- 62-732. Peace officers to enforce act.
- 62-733. Penalty for violation of act.
- 62-734. Prior law still in effect.
- 62-735. Jurisdiction.
- 62-736. Severability.

62-701. Short title. This act may be cited as the "Montana Card Games Act."

History: En. 62-701 by Sec. 1, Ch. 293, defining terms; permitting local licensing and regulation; providing penalties and providing an effective date.
L. 1974.

Title of Act

An act legalizing certain card games;

62-702. Definitions. As used in this act and unless the context otherwise requires, the following terms or phrases have the following meanings:

(1) "Authorized card game" means any card game permitted by this act.

(2) "Card game" means any game played with cards for which the prize is money or any item of value.

History: En. 62-702 by Sec. 2, Ch. 293,
L. 1974.

62-703. Unauthorized card games prohibited. (1) It is unlawful for any person to conduct or participate in any card game or make any tables available for the playing of card games except those card games authorized by this act.

(2) The card games authorized by this act are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, rummy, whist, solo, and poker.

History: En. 62-703 by Sec. 3, Ch. 293,
L. 1974.

62-704. Prizes not to exceed one hundred dollars (\$100). No prize for any individual game shall exceed the value of one hundred dollars (\$100). Games shall not be combined in any manner so as to increase the value of the ultimate prize awarded.

History: En. 62-704 by Sec. 4, Ch. 293,
L. 1974.

62-705. Rules of play to be posted—rake-off approved. Rules governing the conduct of each game shall be prominently posted on the premises of any licensed establishment where such game is conducted. Such rules shall include notice of the maximum percentage rake-off if any, and shall require that the person taking the rake-off do so in an obvious manner and only after announcing the amount of each rake-off, which shall only be taken at the conclusion of each game when the winner of each individual pot has been determined.

History: En. 62-705 by Sec. 5, Ch. 293, L. 1974.

62-706. Gambling on cash basis. (1) In every authorized card game the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, IOU, or other evidence of indebtedness may be offered or accepted as part of the price of participating in a card game or as payment of a debt incurred therein.

(2) No action based on such a debt is maintainable in a court of this state.

History: En. 62-706 by Sec. 6, Ch. 293, L. 1974; amd. Sec. 1, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "authorized card game" in subsection (1) for

"gambling game conducted pursuant to any gambling law of the state"; deleted "gambling" before "game" and "debt" throughout the section; and made minor changes in phraseology and punctuation.

62-707. Local governing bodies may issue licenses. (1) Any city, town, or county may issue licenses for the games provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game as provided for in this act shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be deemed to be a revocable privilege, and no holder thereof may acquire any vested rights therein or thereunder.

History: En. 62-707 by Sec. 7, Ch. 293, L. 1974; amd. Sec. 2, Ch. 508, L. 1977.

Amendments

The 1977 amendment deleted "gambling"

before "games" in the middle of the first sentence, and before "game" in the middle of the fourth sentence, of subsection (1); and made minor changes in phraseology and punctuation.

62-708. Governing body may establish regulations. The governing body authorized to issue gambling licenses pursuant to this act may establish by ordinance or resolution regulations governing the qualifications for and the issuing, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license may be issued to:

(1) a person who has been convicted of being the keeper or is keeping a house of prostitution;

(2) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(3) a person whose license issued under this act has been revoked for cause;

(4) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(5) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(6) a person who is not the owner and operator of the business. Additional regulations may also be adopted for the purpose of the protection of the public health, welfare, and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

History: En. 62-708 by Sec. 8, Ch. 293, L. 1974; amd. Sec. 3, Ch. 508, L. 1977. of prostitution" for "house of ill fame" in subdivision (1); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "house

62-709. Minors may not participate. No person under the age of 18 years may be permitted to participate in any card game held, operated, or conducted pursuant to this act.

History: En. 62-709 by Sec. 9, Ch. 293, L. 1974; amd. Sec. 4, Ch. 508, L. 1977. game" for "game or games of chance"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "card

62-710. Cheating unlawful. It shall be unlawful to conduct or participate in a card game authorized by this act in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the game.

History: En. 62-710 by Sec. 10, Ch. 293, L. 1974; amd. Sec. 5, Ch. 508, L. 1977. beginning of the section for "gambling game authorized by this act or any other gambling law"; deleted "gambling" before "game" at the end of the section; and made a minor change in punctuation.

Amendments

The 1977 amendment substituted "card game authorized by this act" near the

62-711. Peace officers to enforce act. It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain

against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-711 by Sec. 11, Ch. 293,
L. 1974.

62-712. Penalty for violation of act. Every person who willfully violates or who procures, aids or abets in the willful violation of this act or any ordinance, resolution or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

History: En. 62-712 by Sec. 12, Ch. 293,
L. 1974.

62-713. Jurisdiction. Jurisdiction for all cases involving violations of this act is in the district court.

History: En. 62-713 by Sec. 13, Ch. 293,
L. 1974; amd. Sec. 6, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "Jurisdiction" for "Venue."

62-714. Prior laws still in effect. To the extent that they are not specifically superseded by provisions of this act or any other gambling law, the provisions of sections 94-8-401 through 94-8-431, R. C. M. 1947, remain in effect.

History: En. 62-714 by Sec. 14, Ch. 293,
L. 1974.

out the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Separability Clause

Section 15 of Ch. 293, Laws 1974 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect with-

Effective Date

Section 16 of Ch. 293, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

62-715. Short title. This act shall be known and may be cited and referred to as the "Bingo and Raffles Law."

History: En. 62-715 by Sec. 1, Ch. 294,
L. 1974.

games of chance commonly known as bingo and raffles; defining terms; permitting local licensing and regulation; providing penalties; and providing an effective date.

Title of Act

An act making lawful the conducting of

62-715.1. Bingo and raffles authorized. Conducting or participating in games of chance as defined in 62-716 and in accordance with the provisions of 62-715 through 62-726 is lawful.

History: En. 62-715.1 by Sec. 7, Ch. 508,
L. 1977.

Title of Act

An act for the general revision of laws relating to gambling.

62-716. Definitions. As used in this act, unless the context otherwise requires, the following terms or phrases shall have the following meanings:

(1) "Game of chance" means the specific kind of game of chance commonly known as:

(a) "bingo," in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random; and such prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of one hundred dollars (\$100) for each individual bingo award. The price for an individual bingo card shall not exceed fifty cents (\$.50). It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award;

(b) "raffles," which are conducted by drawing for prizes. Prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and must not exceed the value of one thousand dollars (\$1,000) for each individual raffle card. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of such award.

(2) "Equipment" means:

(a) with respect to bingo, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct and playing of bingo; or

(b) with respect to raffles, the implements, devices and machines designed, intended or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence of right to participate in raffles.

History: En. 62-716 by Sec. 2, Ch. 294,
L. 1974.

Electronic Bingo and Keno Games

Electronic bingo and keno games are

similar in all relevant respects to live games and are within the coverage of this act. *Treasure State Games, Inc. v. State*, — M —, 552 P 2d 1008.

62-717. Restrictions on bingo and raffles. In the playing of bingo, no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game. Raffles authorized by this act shall be restricted to events and participants within the geographic confines of the state of Montana.

History: En. 62-717 by Sec. 3, Ch. 294,
L. 1974.

62-718. No raffle drawing before thirty (30) days or after ninety (90) days. No raffle drawing may be held nor winner determined unless the chances to participate have been offered for sale for at least thirty (30) days prior to the drawing. The drawing shall take place no later than ninety (90) days after the first offering for sale of chances to participate.

History: En. 62-718 by Sec. 4, Ch. 294,
L. 1974.

62-719. Local governing bodies may issue licenses. (1) Any city, town, or county may issue licenses for games of chance provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game of chance as provided for in this act may be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be considered to be a revocable privilege, and no holder thereof may acquire any vested rights therein or thereunder.

History: En. 62-719 by Sec. 5, Ch. 294, L. 1974; amd. Sec. 8, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted references to games of chance for references to gambling games; and made minor changes in phraseology and punctuation.

62-720. Governing body may establish regulations. (1) The governing body authorized to issue gambling licenses pursuant to this act may establish by ordinance or resolution regulations governing the qualifications for the issuance, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license may be issued to:

(a) a person who has been convicted of being the keeper or is keeping a house of prostitution;

(b) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(c) a person whose license issued under this act has been revoked for cause;

(d) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(f) a person who is not the owner and operator of the business.

(2) Additional regulations may also be adopted for the purpose of the protection of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

History: En. 62-720 by Sec. 6, Ch. 294, L. 1974; amd. Sec. 9, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "house

of prostitution" for "house of ill fame" in subdivision (1) (a); and made minor changes in phraseology, punctuation and style.

62-721. Minors not to participate. No person under the age of eighteen (18) years shall be permitted to participate in any game or games of chance held, operated or conducted pursuant to this act.

History: En. 62-721 by Sec. 7, Ch. 294, L. 1974.

62-722. Peace officers to enforce act. It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-722 by Sec. 8, Ch. 294, L. 1974.

62-723. Penalty for violation of act. Every person who willfully violates or who procures, aids or abets in the willful violation of this act or any ordinance, resolution or regulation adopted pursuant thereto shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

History: En. 62-723 by Sec. 9, Ch. 294, L. 1974.

62-724. Gambling on cash basis. (1) In every game of chance the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, IOU, or other evidence of indebtedness shall be offered or accepted as part of the price of participation in such game or as payment of a debt incurred therein.

(2) No action based on such a debt is maintainable in a court of this state.

History: En. 62-724 by Sec. 10, Ch. 294, L. 1974; amd. Sec. 10, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "game of chance" near the beginning of the sec-

tion for "gambling game conducted pursuant to any gambling law of the state"; deleted "gambling" before "game" and "debt" throughout the section; and made minor changes in phraseology and punctuation.

62-725. Cheating unlawful. It shall be unlawful to conduct or participate in a game of chance authorized by this act in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the game.

History: En. 62-725 by Sec. 11, Ch. 294, L. 1974; amd. Sec. 11, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "game of chance authorized by this act" for

"gambling game authorized by this act or any other gambling law"; deleted "gambling" before "game" at the end of the section; and made a minor change in punctuation.

62-726. Bingo and raffles exempt from prior law. Bingo and raffles as in this act authorized are exempt from the provisions of sections 94-8-301 through 94-8-311, R. C. M. 1947.

History: En. 62-726 by Sec. 12, Ch. 294, L. 1974.

Separability Clause

Section 13 of Ch. 294, Laws 1974 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 14 of Ch. 294, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

62-727. Sports pools defined—rules. "Sports pools" means a card divided into squares or spaces with the names of the participants in the pool written within such squares or spaces, for which consideration in money is paid by the person playing for each square or space for the chance to win money or other items of value on any sports event wherein the participants in such sports event are natural persons or animals. The card used for recording the pool and upon which the squares or spaces appear shall clearly state in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance and the total amount to be paid to the winners.

No chance to participate in a sports pool may be sold other than upon the premises in which the sports pool is conducted. No individual chance to participate in a sports pool shall be sold for a consideration in excess of one dollar (\$1) and the total amount to be paid to the winners of any individual sports pool shall not exceed the value of one hundred dollars (\$100). The winner of any sports pool shall receive a one hundred per cent (100%) payout of the value of the sports pool.

History: En. 62-727 by Sec. 1, Ch. 290, L. 1974.

Title of Act

An act legalizing sports pools; providing penalties; and providing an effective date.

62-727.1. Sports pools authorized. Conducting or participating in sports pools as defined and governed in 62-727 through 62-736 is lawful.

History: En. 62-727.1 by Sec. 12, Ch. 508, L. 1977.

62-728. Transportation exempt from federal law. The transportation of sports pool cards is hereby declared exempt from the provisions of 15 U.S.C. 1172.

History: En. 62-728 by Sec. 2, Ch. 290, L. 1974.

62-729. Gambling on cash basis. (1) In every sports pool the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play at the time the pool is entered. No check, credit card, note, IOU, or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a pool.

(2) No action based on a debt incurred in a sports pool is maintainable in a court of this state.

History: En. 62-729 by Sec. 3, Ch. 290, L. 1974; amd. Sec. 13, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "sports pool" near the beginning of subsection (1) for "gambling game conducted pursuant to any gambling law of the state"; substituted "at the time the pool is entered"

at the end of the second sentence of subsection (1) for "the gambling game at the time the game is played"; substituted "a pool" at the end of subsection (1) for "a gambling game or as payment of a gambling debt"; substituted "debt incurred in a sports pool" in the middle of subsection (2) for "gambling debt"; and made minor changes in punctuation.

62-730. Minors may not participate. No person under the age of 18 years may be permitted to participate in any sports pool held, operated, or conducted pursuant to this act.

History: En. 62-730 by Sec. 4, Ch. 290, L. 1974; amd. Sec. 14, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "sports

pool" for "game or games of chance"; and made minor changes in phraseology, punctuation and style.

62-731. Cheating unlawful. It shall be unlawful to conduct or participate in a sports pool authorized by this act in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the pool.

History: En. 62-731 by Sec. 5, Ch. 290, L. 1974; amd. Sec. 15, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "sports pool authorized by this act" near the be-

ginning of the section for "gambling game authorized by this act or any other gambling law"; substituted "pool" for "gambling game" at the end of the section; and made a minor change in punctuation.

62-732. Peace officers to enforce act. It shall be the duty of all peace officers to enforce the provisions of this act and to arrest and complain against any person violating any provision of this act. It shall be the duty of the county attorney of the respective county to prosecute all violations of this act in the manner and form as is provided by law and it shall be a misdemeanor for any such person or persons to knowingly fail to perform his or her duty under this section.

History: En. 62-732 by Sec. 6, Ch. 290, L. 1974.

62-733. Penalty for violation of act. Every person who willfully violates or who procures, aids or abets in the willful violation of this act, shall be deemed guilty of a misdemeanor and upon conviction, shall be punished

by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than three (3) months, or both.

History: En. 62-733 by Sec. 7, Ch. 290,
L. 1974.

62-734. Prior law still in effect. To the extent that they are not specifically superseded by the provisions of this act or any other gambling law, the provisions of sections 94-8-401 through 94-8-431, R. C. M. 1947, remain in effect.

History: En. 62-734 by Sec. 8, Ch. 290,
L. 1974.

62-735. Jurisdiction. Jurisdiction for all violations of this act is in the district court.

History: En. 62-735 by Sec. 9, Ch. 290,
L. 1974; amd. Sec. 16, Ch. 508, L. 1977.

Amendments

The 1977 amendment substituted "Jurisdiction" for "Venue."

62-736. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. 62-736 by Sec. 10, Ch. 290,
L. 1974.

vided the act should be in effect from and after its passage and approval. Approved March 25, 1974.

Effective Date

Section 11 of Ch. 290, Laws 1974 pro-

TITLE 63—PARTNERSHIP

Chapter

1. Partnership in general—preliminary provisions—nature of partnership, 63-107.
4. General partnership—property rights of partner, 63-402.
5. General partnership—dissolution and winding up, 63-504.
7. Special partnership—formation, 63-702.
8. Special partnership—powers, duties and liabilities of partners, 63-803.
9. Special partnership—alteration and dissolution—construction of act—existing partnerships, 63-901, 63-905.

CHAPTER 1—PARTNERSHIP IN GENERAL—PRELIMINARY PROVISIONS— NATURE OF PARTNERSHIP

Section

63-107. Rules for determining the existence of a partnership.

63-107. Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

(1) to (3) * * * [Same as parent volume.]

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that such person is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

(b) As wages of an employee or rent to a landlord,

(c) As an annuity to a surviving spouse or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary [sic] with the profits of the business,

(e) As the consideration for the sale of a good will of a business or other property by installments or otherwise.

History: En. Sec. 7, Ch. 251, L. 1947;
amd. Sec. 28, Ch. 535, L. 1975.

person is a partner" for "he is a partner" in subdivision (4); and substituted "surviving spouse" for "widow" in item (c) of subdivision (4).

Amendments

The 1975 amendment substituted "such

CHAPTER 4—GENERAL PARTNERSHIP—PROPERTY RIGHTS OF PARTNER

Section

63-402. Nature of a partner's right in specific partnership property.

63-402. Nature of a partner's right in specific partnership property.

(1) A partner is co-owner with the other partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes, but has no

right to possess such property for any other purpose without the consent of the other partners.

(b) and (c) * * * [Same as parent volume.]

(d) On the death of a partner, that partner's right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, in which case such deceased partner's right in such property vests in the deceased's legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) Provided the proceeds of a deceased partner's interest are included in the assets of the decedent's estate such property is not subject to a lien of the surviving spouse for his or her elective share, or a lien for, or allowances to surviving spouses, heirs, or next of kin.

History: En. Sec. 25, Ch. 251, L. 1947; present subdivision (2)(e) for "A partner's right in specific partnership property is not subject to dower, courtesy, or allowances to widows, heirs, or next of kin";
amd. Sec. 29, Ch. 535, L. 1975. and made minor changes in phraseology.

Amendments

The 1975 amendment substituted the

CHAPTER 5—GENERAL PARTNERSHIP—DISSOLUTION AND WINDING UP

Section

63-504. Dissolution by decree of court.

63-503. Causes of dissolution.

Sale of Partnership Property

Partnership was dissolved by sale of partnership property and articles did not control distribution of proceeds from that

sale upon subsequent death of one partner. Hansen v. Kiernan, 159 M 448, 499 P 2d 787.

63-504. Dissolution by decree of court. (1) On application by or for a partner, the court shall decree a dissolution whenever:

(a) a partner is declared seriously mentally ill in a judicial proceeding or is shown to be mentally incompetent;

(b) a partner becomes in any other way incapable of performing his part of the partnership contract;

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(d) a partner willfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

(e) the business of the partnership can only be carried on at a loss; or

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under 63-404 or 63-405, the court shall decree a dissolution:

(a) after the termination of the specified term or particular undertaking;

(b) at any time if the partnership was a partnership at will when the interest was assigned or when the order charging such interest was issued.

History: En. Sec. 32, Ch. 251, L. 1947; amd. Sec. 14, Ch. 62, L. 1977.

Amendments

The 1977 amendment substituted "seriously mentally ill" for "a lunatic" in sub-

division (1)(a); substituted "mentally incompetent" for "of unsound mind" at the end of subdivision (1)(a); added "the court shall decree a dissolution" at the end of subsection (2); and made minor changes in phraseology, punctuation and style.

CHAPTER 7—SPECIAL PARTNERSHIP—FORMATION

Section

63-702. Formation.

63-701. Limited partnership defined.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted the

"Uniform Limited Partnership Act": Kansas and Maine.

63-702. Formation. (1) Two or more persons desiring to form a limited partnership shall sign and swear to a certificate, which shall state:

- (a) the name of the partnership;
- (b) the character of the business;
- (c) the location of the principal place of business;
- (d) the name and place of residence of each member, general and limited partners being respectively designated;
- (e) the term for which the partnership is to exist;
- (f) the amount of cash, and a description of and the agreed value of the other property, contributed by each limited partner;
- (g) the additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they are to be made;
- (h) the time, if agreed upon, when the contribution of each limited partner is to be returned;
- (i) the share of the profits or the other compensation by way of income which each limited partner is to receive by reason of his contribution;
- (j) the right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution;
- (k) the right, if given, of the partners to admit additional limited partners;
- (l) the right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;
- (m) the right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or serious mental illness of a general partner; and

(n) the right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) Those persons shall file the certificate in the office of the county clerk and recorder of the county in which the principal place of business is located and in the office of the secretary of state.

(3) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of subsections (1) and (2).

History: En. Sec. 2, Ch. 252, L. 1947;
amd. Sec. 1, Ch. 111, L. 1969; amd. Sec. 15,
Ch. 62, L. 1977.

Amendments

The 1977 amendment substituted "serious mental illness" for "insanity" in subdivision (1)(m); and made minor changes in phraseology, punctuation and style.

CHAPTER 8—SPECIAL PARTNERSHIP—POWERS, DUTIES AND LIABILITIES OF PARTNERS

Section

63-803. Rights, powers, and liabilities of a general partner.

63-803. Rights, powers, and liabilities of a general partner. A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners may not:

- (1) do an act in contravention of the certificate;
- (2) do an act which would make it impossible to carry on the ordinary business of the partnership;
- (3) confess a judgment against the partnership;
- (4) possess partnership property or assign their rights in specific partnership property for other than a partnership purpose;
- (5) admit a person as a general partner;
- (6) admit a person as a limited partner, unless the right so to do is given in the certificate;
- (7) continue the business with partnership property on the death, retirement, or serious mental illness of a general partner, unless the right to do so is given in the certificate.

History: En. Sec. 9, Ch. 252, L. 1947; amd. Sec. 16, Ch. 62, L. 1977.

ous mental illness" for "insanity" in subdivision (7); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "seri-

CHAPTER 9—SPECIAL PARTNERSHIP—ALTERATION AND DISSOLUTION —CONSTRUCTION OF ACT—EXISTING PARTNERSHIPS

Section

63-901. Effect of retirement, death, or serious mental illness of a general partner.
63-905. When certificate to be canceled or amended.

63-901. Effect of retirement, death, or serious mental illness of a general partner. The retirement, death, or serious mental illness of a general

partner dissolves the partnership, unless the business is continued by the remaining general partners:

- (1) under a right to do so stated in the certificate; or
- (2) with the consent of all members.

History: En. Sec. 20, Ch. 252, L. 1947; ous mental illness" for "insanity"; and
amd. Sec. 17, Ch. 62, L. 1977. made minor changes in phraseology and style.

Amendments

The 1977 amendment substituted "seri-

63-905. When certificate to be canceled or amended. (1) The certificate shall be canceled if the partnership is dissolved or if all limited partners cease to be such.

(2) A certificate shall be amended if:

(a) there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner;

(b) a person is substituted as a limited partner;

(c) an additional limited partner is admitted;

(d) a person is admitted as a general partner;

(e) a general partner retires, dies, or becomes seriously mentally ill and the business is continued under 63-901;

(f) there is a change in the character of the business of the partnership;

(g) there is a false or erroneous statement in the certificate;

(h) there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;

(i) a time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate; or

(j) the members desire to make a change in any statement in the certificate so that it accurately represents the agreement between them.

History: En. Sec. 24, Ch. 252, L. 1947;
amd. Sec. 18, Ch. 62, L. 1977.

Repealing Clause

Section 19 of Ch. 62, Laws 1977 read
"Sections 14-221 and 14-222, R.C.M. 1947,
are repealed."

Amendments

The 1977 amendment substituted "seriously mentally ill" for "insane" in subdivision (2)(e); and made minor changes in phraseology, punctuation and style.

TITLE 64—PERSONS AND PERSONAL RIGHTS

Chapter

1. Persons, minors, adults and those of unsound mind, 64-101.
2. Personal rights—libel and slander—protection of personal relations, 64-207.1, 64-209.
3. Freedom from discrimination, 64-301, 64-304 to 64-330.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

Section

64-101. Minors and adults defined.

64-101. (5673) Minors and adults defined. Minors are:

1. Males under eighteen (18) years of age;
2. Females under eighteen (18) years of age. All other persons are adults.

History: En. Secs. 10-11, Civ. C. 1895; re-en Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R. C. M. 1921; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973. Cal. Civ. C. Sec. 25. Field Civ. C. Sec. 11.

Amendments

The 1971 amendment changed the age of minority from 21 for males and 18 for females to 19 in both instances.

The 1973 amendment reduced the age of majority from 19 to 18 for both males and females.

64-112. (5685) Repealed.

Repeal

Section 64-112 (Sec. 23, Civ. C. 1895; Sec. 1, Ch. 8, L. 1925), relating to powers of a person who has been adjudged incom-

petent, and the restoration of competency, was repealed by Sec. 38, Ch. 466, Laws of 1975.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER— PROTECTION OF PERSONAL RELATIONS

Section

- 64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages.
- 64-209. Protection of personal relations.

64-203. (5690) Libel defined.

Multi-Publication Rule

Montana follows the multi-publication rule rather than the single publication rule in determining the situs and time of the tort in libel cases; under the multi-publication rule the cause of action arose upon

the arrival and sale of the allegedly libelous magazines in Montana rather than upon the first publication or printing in another state. *Lewis v. Reader's Digest Association, Inc.*, — M —, 512 P 2d 702.

64-204. (5691) Slander, what constitutes.

Falsity of Statements

Prior action against corporate director which had been terminated by accord and satisfaction was not proof of the falsity

of allegedly slanderous statements made in letters charging the director with breach of fiduciary duty. *Simkins v. Jaffe*, — M —, 527 P 2d 1195.

64-207.1. Notice in writing to publisher of libelous or defamatory matter—opportunity to correct—defense and mitigation of damages. Before any civil action shall be commenced on account of any libelous or defamatory publication in any newspaper, magazine, periodical, radio or television station, or cable television system, the libeled person shall first give those alleged to be responsible or liable for the publication a reasonable opportunity to correct the libelous or defamatory matter. Such opportunity shall be given by notice in writing specifying the article and the statements therein which are claimed to be false and defamatory and a statement of what are claimed to be the true facts. The notice may also state the sources, if any, from which the true facts may be ascertained with definiteness and certainty. The first issue of a newspaper, magazine or periodical published after the expiration of one week from the receipt of such notice shall be within a reasonable time for correction. In the case of radio and television stations and cable television systems a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, which is made within seven (7) days following receipt of such notice shall be within a reasonable time for correction. To the extent that the true facts are, with reasonable diligence, ascertainable with definiteness and certainty, only a retraction shall constitute a correction; otherwise the publication of the libeled person's statement of the true facts, or so much thereof as shall not be libelous of another, scurrilous, or otherwise improper for publication, published as his statement, shall constitute a correction within the meaning of this section. If it shall appear upon trial that the publication was made under honest mistake or misapprehension, then a correction, timely published, without comment, in a position and type as prominent as the alleged libel, or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration, shall constitute a defense against the recovery of any damages except actual damages, as well as being competent and material in mitigation of actual damages to the extent the correction published does so mitigate them.

History: En. Sec. 1, Ch. 159, L. 1961; amd. Sec. 1, Ch. 58, L. 1971.

Amendments

The 1971 amendment inserted references to cable television systems in the first and fifth sentences; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 58, Laws 1971 repealed all acts and parts of acts in conflict therewith.

64-208. (5692) What communications are privileged.

Absence of Malice

It is not necessary to show the absence of malice in a publication in the proper discharge of an official duty in order for such publication to be privileged. *Storch v. Board of Directors of Eastern Montana Region Five Mental Health Center*, — M —, 545 P 2d 644.

Discharge of Official Duty

A communication from a mental health

center director to the center's program director seeking resignation of drug abuse consultant on grounds of personal unfitness, though possibly defamatory, was made by a public official in the discharge of his official duties and was, therefore, subject to an absolute privilege under this section. *Storch v. Board of Directors of Eastern Montana Region Five Mental Health Center*, — M —, 545 P 2d 644.

64-209. (5693) Protection of personal relations. The rights of personal relations forbid:

1. The abduction of a parent from a child;
2. The abduction or enticement of a wife from her husband or a husband from his wife, of a child from a parent or from a guardian entitled to its custody, or of a servant from a master;
3. The seduction of a spouse, child, orphan, or servant;
4. Any injury to a servant which affects the servant's ability to serve the master.

History: En. Sec. 35, Civ. C. 1895; re-en. Sec. 3605, Rev. C. 1907; re-en. Sec. 5693, R. C. M. 1921; amd. Sec. 30, Ch. 535, L. 1975. Cal. Civ. C. Sec. 49. Field Civ. C. Sec. 32.

subdivision 1; inserted "or a husband from his wife" in subdivision 2; substituted "spouse, child" for "wife, daughter" in subdivision 3; deleted "sister" after "orphan" in subdivision 3; substituted "the servant's ability to serve the master" for "his ability to serve his master" in subdivision 4; and made minor changes in phraseology.

Amendments

The 1975 amendment deleted "of a husband from his wife" after "abduction" in

64-211. Repealed.

Repeal

Section 64-211 (Sec. 1, Ch. 240, L. 1955), relating to the prohibition of discrimina-

tion in public places of accommodation or amusement, was repealed by Sec. 18, Ch. 38, Laws 1977.

CHAPTER 3—FREEDOM FROM DISCRIMINATION

Section

- 64-301. Freedom from discrimination in employment and in places of public accommodation and amusement.
- 64-304. Employment discrimination against handicapped prohibited.
- 64-305. Definitions.
- 64-306. Specific discriminatory practices.
- 64-306.1. Exemptions—records.
- 64-307. When discrimination justified.
- 64-308. Complaint—how filed—by whom.
- 64-309. Power of commission on finding of discrimination.
- 64-310. Injunction to enforce commission order.
- 64-311. Staff may include attorney.
- 64-312. Unlawful to violate act—penalty.
- 64-313. Powers of commission—subpoena.
- 64-314. Commission may require notice.
- 64-315. Commission to adopt rules.
- 64-316. Definitions.
- 64-317. Employment of state and local government personnel—discrimination prohibited.
- 64-318. Nonparticipation in discriminatory practices.
- 64-319. Public contracts.
- 64-320. Employment requests—cooperation with commission—enforcement of policy.
- 64-321. Licensing.
- 64-322. Public accommodations.
- 64-323. State programs.
- 64-324. Distribution of funds—withholding state assistance.
- 64-325. Co-operation with the commission for human rights.
- 64-326. Annual reports.
- 64-327. Local governmental units.
- 64-328. Permitted distinctions.
- 64-329. Remedies.
- 64-330. Quotas not required.

64-301. Freedom from discrimination in employment and in places of public accommodation and amusement. The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include but not be limited to:

(1) the right to obtain and hold employment without discrimination; and

(2) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977.

Amendments

The 1971 amendment inserted "sex" in the introductory paragraph.

The 1974 amendment inserted "physical handicap" after "sex" near the beginning of the section.

The 1975 amendment substituted "physical or mental handicap" for "physical handicap"; and added "age" as an improper basis for discrimination.

The 1977 amendment inserted "religion" in the first sentence; and made minor changes in phraseology, punctuation and style.

64-302, 64-303. Repealed.

Repeal

Sections 64-302 and 64-303 (Secs. 2, 3, Ch. 201, L. 1965; Sec. 2, Ch. 39, L. 1971; Sec. 2, Ch. 77, L. 1974), relating to free-

dom from discrimination and discrimination as a misdemeanor, were repealed by Sec. 10, Ch. 283, Laws of 1974.

64-304. Employment discrimination against handicapped prohibited.

It is unlawful to discriminate in the hiring or employment against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm. A person who practices discrimination in violation of this section commits a misdemeanor, and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: En. Sec. 3, Ch. 77, L. 1974.

Title of Act

An act extending the antidiscrimination

statutes to prohibit discrimination against the physically handicapped; amending sections 64-301 and 64-302, R. C. M. 1947, and providing a penalty and a civil remedy.

64-305. Definitions. As used in this act, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 82A-1015.

(3) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; a business, nursing, professional, secretarial, technical, or vocational school; or an agent of an educational institution.

(4) "Employee" means any individual employed by an employer.

(5) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodation or services that are available on a non-membership basis.

(6) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(7) "Financial institution" means a commercial bank, trust company, mutual savings bank, cooperative bank, homestead association, finance company, mutual savings and loan association, or an insurance company.

(8) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(9) "Labor organization" means an organization or an agent of the organization, organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid protection of employees.

(10) "Mental handicap" means any mental disability resulting in sub-average intellectual functioning or impaired social competence.

(11) "National origin" means ancestry.

(12) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations.

(13) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(14) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public, including but not limited to a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, night club, trailer park, resort, campground, barber shop, beauty parlor, bathroom, rest house, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, hospital, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

(15) "Staff" or "commission staff" means the staff of the commission for human rights.

(16) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor, including but not limited to the right to incur and defer debt which is secured by residential real property.

(17) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit, for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(18) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

History: En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977.

Title of Act

An act to prevent discrimination in employment, public accommodations, education, and real property transactions; to establish a commission on human rights; to authorize the creation of local commissions and to make uniform the law with reference thereto, and for other purposes; and repealing sections 64-302 and 64-303, R. C. M. 1947.

Amendments

Chapter 121, Laws of 1975, added the

definitions of "Credit," "Creditor" and "Credit transaction."

Chapter 524, Laws of 1975, deleted a definition of "Department," relating to the department of labor and industry; redesignated the remaining subdivisions accordingly; substituted "or" for "and" after "functioning" in the definition of "Mental handicap"; and added the definition of "Staff" or "commission staff."

The 1977 amendment inserted "the following definitions apply" at the end of introductory phrase; substituted "or an agent" for "and an agent" in subdivision (9); substituted "alcoholic beverages" for "spirituous" before "or malt liquors" in subdivision (14); and made minor changes in phraseology, punctuation and style.

64-306. Specific discriminatory practices. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, marital status, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, marital status, creed, religion, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin

or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

(4) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property; or

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property. A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of this subsection.

(5) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(6) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an effected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(7) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members through a quota or otherwise because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

(8) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap, sex, or marital status against any person in

any credit transaction which is subject to the jurisdiction of any state or federal court of record.

(9) It is an unlawful discriminatory practice for a person to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this act.

(10) Any grounds urged as a "reasonable" basis for an exemption under any section of this act shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977.

Amendments

Chapter 121, Laws of 1975, added subsection (7).

Chapter 524, Laws of 1975, inserted "marital status" in subdivisions (1)(a), (1)(c), (4), (5)(a), (5)(b), and (6)(c); substituted present subdivision (1)(b) for "a labor organization, because of a person's sex, age, physical or mental handicap, race, religion, color, or national origin, to exclude or expel him from its membership, apprenticeship, or training program, or to discriminate in any way against a member of, or an applicant to the labor organization or an employer or an employee"; substituted present subdivisions (1)(d) and (1)(e) for "an employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against a person because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, or assisted in a proceeding under this act. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confi-

dential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public"; added "unless based on reasonable grounds" to subsecs. (2)(a), (4), (5)(a) and (5)(b); deleted "under rules adopted by the commission" from the end of subdivisions (2)(b), (3)(a), (3)(b), from the first sentence in subdivision (3)(c) and from subdivision (6)(a); substituted "shall be excluded" for "may be excluded" near the end of subdivision (3)(c); added "or to the immediate staff of the majority and minority leadership of the Montana legislature" to subdivision (5)(c); inserted "religion, sex, marital status" in subdivisions (6)(a) and (6)(b); inserted "sex, marital status, age" in subdivision (6)(d); added subsections (8) and (9); and made minor changes in style.

The 1977 amendment inserted "creed" throughout the section; added "religion" to subdivisions (1)(c), (1)(d), (6)(b), and subsection (8); redesignated subdivision (1)(e) as subsection (2); redesignated subsections (2) through (9) as subsections (3) through (10); deleted "ancestry" after "national origin" in subsection (8), and made minor changes in phraseology, punctuation and style.

64-306.1. Exemptions—records. (1) A person who seeks to be exempted from the requirements of 64-306 may petition the commission for a declaratory ruling as provided in 82-4218 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden shall be on the petitioner to demonstrate that an exemption should be granted.

(2) The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical

information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977.

Title of Act

An act to generally revise the laws relating to discrimination in employment, public accommodations, education, real property law and relating to the human rights commission; amending section 64-301, 64-305 through 64-312, R. C. M. 1947.

Amendments

The 1977 amendment deleted "federal" before "civil rights laws and regulations" in the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

64-307. When discrimination justified. (1) Sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

(3) Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977.

Amendments

Chapter 121, Laws of 1975, added the second paragraph to subsection (1).

Chapter 524, Laws of 1975, inserted "marital status" near the beginning of

subsection (1); and made minor changes in phraseology.

The 1977 amendment inserted "creed" after "race" in subsection (1); redesignated the former second paragraph of subsection (1) as subsection (2); redesignated former subsection (2) as subsection (3); and made minor changes in phraseology and punctuation.

64-308. Complaint—how filed—by whom. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this act. The complaint shall be in the form of a written, verified complaint stating the name and address of the person alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention. A complaint under this act must be filed with the commission within one hundred eighty (180) days after the alleged unlawful discriminatory practice occurred or was discovered. Any complaint not filed within the time set forth herein may not be considered by the commission.

(2) The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four (4) times a year to hear and act upon all complaints filed. In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

(3) At any time after a complaint is filed under this act, alleging an unlawful discriminatory practice, the commission may file a petition in

the district court in the county in which the subject of the complaint occurs, or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint. The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond fourteen (14) days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

(4) The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

(5) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served together with a copy of the complaint, requiring the person, employer, business, corporation or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission. The hearing shall be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, employer, business, corporation, organization, agency or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant or by an attorney representing the complainant. The hearing and any subsequent proceedings under the act except as permitted under section 64-310 shall be held in accordance with the Montana Administrative Procedure Act.

(6) The commission may make provision for defraying the expenses of any indigent party in a contested hearing held pursuant to this act.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975.

Amendments

The 1975 amendment divided the former first sentence of subsection (1) into two sentences; substituted "commission," "commission staff," or "staff" for "department"

throughout the section; added the last two sentences of subsection (1); added the last sentence of subsection (2); substituted "and upon a finding" for "or upon a finding" near the end of subsection (3); added subsection (6); and made minor changes in phraseology and style.

64-309. Power of commission on finding of discrimination. (1) If the commission finds that a person against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, it shall order him to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The order may not require the payment of any punitive damages as defined by the Revised Codes of Montana.

(3) If the commission finds that a person against whom a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

(4) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time shall be no more than three (3) years.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975.

Amendments

The 1975 amendment redesignated the last sentence of subsection (1) as subdivision (1)(a); redesignated former subdivi-

sions (a) and (b) as (b) and (c); redesignated former subdivision (c) as subsection (2); renumbered former subsection (2) as (3); added subsection (4); and made minor changes in phraseology, punctuation and style.

64-310. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975.

Amendments

The 1975 amendment inserted "If the

commission's order is not obeyed"; and substituted "commission staff shall" for "department may."

64-311. Staff may include attorney. (1) The staff may include an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, shall assist in the preparation and presentation of complaints to the commission, and shall represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

History: En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975.

Compiler's Notes

As enacted and amended, this section contained no subsection (2).

Amendments

The 1975 amendment substituted "The staff may include an attorney" for "The department may employ an attorney" at the beginning of the section.

64-312. Unlawful to violate act—penalty. (1) It is unlawful for a person to aid, abet, incite, compel or coerce the doing of an act forbidden under this act or to attempt to do so.

(2) No person or institution may discharge or discriminate against any other person because he or she has made a complaint, assisted with an investigation or proceeding under this act or in any other manner opposed any practice made unlawful under this act.

(3) A person, employer, business, organization, corporation or agency, both public and private, who or which willfully engages in an unlawful

discriminatory practice prohibited by this act or willfully resists, prevents, impedes, or interferes with the commission, the department or any of its authorized representatives in the performance of duty under this act or who or which willfully violates an order of the commission or violates this act in any other manner, is guilty of a misdemeanor and is punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six (6) months or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975. made unlawful under this act" at the end of subsection (2) for "instituted proceedings."

Amendments

The 1975 amendment substituted "other person" for "participant or potential participant" in subsection (2); and substituted "proceeding under this act or in any other manner opposed any practice

Repealing Clause

Section 10 of Ch. 283, Laws 1974 read "Sections 64-302 and 64-303, R. C. M. 1947, are repealed."

64-313. Powers of commission—subpoena. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths and in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in section 82-4220 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975.

64-314. Commission may require notice. The commission may require any employer, employment agency, labor union, educational institution, financial institution, or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this act to post in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission deems necessary to explain the act. Any person subject to this section refusing to comply with an order of the commission respecting the posting of notice is guilty of a misdemeanor, punishable by a fine of not more than fifty dollars (\$50).

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975.

64-315. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this act. Rule-making procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975.

64-316. Definitions. As used in this act: "state and local governmental agencies" means all branches, departments, offices, boards, bureaus, commissions, agencies, university units, colleges, or any other instrumentality

of state government; and counties, cities, towns, school districts or any other instrumentality of local government.

History: En. 64-316 by Sec. 1, Ch. 487, L. 1975.

nonparticipation of the government of the state of Montana in discrimination on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin, or ancestry.

Title of Act

An act to be known as the "Montana Code of Fair Practices" relating to the

64-317. Employment of state and local government personnel—discrimination prohibited. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977.

ligion, creed" for "religious creed" in subsection (1); deleted "or ancestry" from the end of subsection (1); and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "re-

64-318. Nonparticipation in discriminatory practices. (1) All services of every state and local governmental agency shall be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state and local agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this act and shall initiate comprehensive programs to remedy any defect found to exist.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977.

creed" for "religious creed" in subsection (1); deleted "or ancestry" from the end of subsection (1); substituted "may" for "shall" throughout subsection (2); and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment inserted the subsection designations; substituted "religion,

64-319. Public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods and services shall contain a provision that all hiring shall be on the basis of merit and qualifications and a provision that there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract. As used in this act, "qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977.

in the first sentence; substituted "religion, creed" for "religious creed" in the first sentence; deleted "or ancestry" after "national origin" in the first sentence; and made a minor change in phraseology.

Amendments

The 1977 amendment substituted "may" for "shall" before "be no discrimination"

64-320. Employment requests—cooperation with commission—enforcement of policy. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

(3) The department of labor shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this act and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977.

second sentence of subsection (1); deleted "or ancestry" after "national origin" in the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "religion, creed" for "religious creed" in the

64-321. Licensing. No state or local department, board, or agency may grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state and local agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this act.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977.

in the first sentence; substituted "religion, creed" for "religious creed" in the first sentence; deleted "or ancestry" after "national origin" at the end of the first sentence; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "may" for "shall" before "grant, deny, or revoke"

64-322. Public accommodations. No state or local department, board, or agency shall permit any violation of the public accommodations provisions of section 64-306, R. C. M. 1947.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975.

64-323. State programs. All education, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state or local agencies or in which state or local agencies participate shall be open to all persons, who shall be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Such programs shall be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall be encouraged to involve larger numbers of participants from those segments of the labor force where the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977.

Amendments

The 1977 amendment substituted "re-

ligion, creed" for "religious creed" in the first sentence; deleted "or ancestry" from the end of the first sentence; and made minor changes in phraseology and punctuation.

64-324. Distribution of funds—withholding state assistance. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977.

Amendments

The 1977 amendment substituted "re-

ligion, creed" for "religious creed"; deleted "or ancestry" after "national origin"; and made minor changes in phraseology and punctuation.

64-325. Co-operation with the commission for human rights. All state and local agencies shall co-operate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's request for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission for human rights shall continue to augment its enforcement and education programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975.

64-326. Annual reports. All departments, agencies, commissions, and other bodies of the state government which report to the governor shall

include in their annual reports to the governor, activities undertaken in the past year to effectuate this act. Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the governor.

History: En. 64-326 by Sec. 11, Ch. 487,
L. 1975.

64-327. Local governmental units. Local governmental units affected by this act include all political subdivisions of the state including school districts.

History: En. 64-327 by Sec. 12, Ch. 487,
L. 1975.

64-328. Permitted distinctions. Nothing in this act shall prohibit any public or private employer (1) from enforcing a differentiation based on age or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age; or (2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this act, except that no such employee benefit plan shall excuse the failure to hire any individual; or (3) from discharging or otherwise disciplining an individual for good cause.

History: En. 64-328 by Sec. 13, Ch. 487,
L. 1975.

64-329. Remedies. (1) Any person claiming to be aggrieved by a violation of any provision of this act may file a complaint for redress of the violation with the commission for human rights and upon filing that complaint may, in addition, petition the district court in the district where the complainant resides or where the alleged violation occurred for appropriate relief, and the court may grant such relief, by injunction or otherwise, as it considers appropriate. Commencement of the administrative remedy does not preclude the judicial remedy.

(2) Actions under this section are original actions.

History: En. 64-329 by Sec. 14, Ch. 487,
L. 1975.

64-330. Quotas not required. Nothing in this act shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic or other group affected by this act.

History: En. 64-330 by Sec. 15, Ch. 487,
L. 1975.

TITLE 66—PROFESSIONS AND OCCUPATIONS

Chapter

1. Architecture—regulation of practice, 66-101.1, 66-102, 66-103, 66-106 to 66-114.
4. Barbers and barbershops, 66-401, 66-401.1, 66-403, 66-403.1, 66-405, 66-407 to 66-412.
5. Chiropractic—regulation of practice, 66-501.1, 66-503 to 66-507, 66-510.1 to 66-510.3, 66-511 to 66-513.
6. Podiatry—regulation of practice, 66-601 to 66-608.
8. Cosmetology (beauty shops) regulation, 66-801 to 66-803, 66-805 to 66-809, 66-811 to 66-813.1, 66-815, 66-816, 66-818.
9. Dentistry—regulation of practice, 66-901.1, 66-904 to 66-906, 66-908 to 66-911, 66-913, 66-919 to 66-923.
10. Medicine—regulation of practice, 66-1012, 66-1015, 66-1017 to 66-1021, 66-1023, 66-1025 to 66-1034, 66-1036 to 66-1038, 66-1041 to 66-1043, 66-1045, 66-1048, 66-1050 to 66-1057.
12. Nursing—regulation of practice, 66-1222, 66-1223, 66-1225 to 66-1228, 66-1231, 66-1232, 66-1234, 66-1236 to 66-1243, 66-1246.
13. Optometry—regulation, 66-1301 to 66-1301.2, 66-1302 to 66-1305.1, 66-1307, 66-1308, 66-1311, 66-1312, 66-1314, 66-1316, 66-1318.
14. Osteopathy—regulation of practice, 66-1401.1, 66-1402 to 66-1406, 66-1410, 66-1411, 66-1413.
15. Pharmacy—regulation of sale of drugs and medicines, 66-1501, 66-1502, 66-1504 to 66-1507.2, 66-1508, 66-1511, 66-1512, 66-1516, 66-1521, 66-1521.1, 66-1522, 66-1523, 66-1525, 66-1527 to 66-1536.
16. Pawnbrokers and junk dealers—regulations, 66-1601, 66-1602, 66-1607.
18. Public accountants—regulation, 66-1807.1, 66-1815 to 66-1821, 66-1825, 66-1826, 66-1829, 66-1829.1, 66-1830 to 66-1833, 66-1835 to 66-1838.
19. Real Estate License Act, 66-1924 to 66-1927.1, 66-1929 to 66-1937, 66-1938.1, 66-1940, 66-1943 to 66-1946.
21. Title abstracters—regulation, 66-2101.1, 66-2103 to 66-2105, 66-2108, 66-2110, 66-2111, 66-2114, 66-2115.
22. Veterinary medicine—regulation of practice, 66-2201.1, 66-2202 to 66-2204, 66-2207 to 66-2215.
23. Engineers and land surveyors, 66-2350 to 66-2352, 66-2354 to 66-2363, 66-2365 to 66-2369.
24. Plumbers, 66-2401, 66-2401.1, 66-2402 to 66-2407, 66-2409, 66-2411, 66-2414 to 66-2417, 66-2419, 66-2420, 66-2422, 66-2426, 66-2427.
25. Physical Therapists Practice Act, 66-2501 to 66-2503, 66-2505 to 66-2510, 66-2514.
26. Water Well Contractor's License Act, 66-2602, 66-2602.1, 66-2602.2, 66-2604 to 66-2610.
27. Morticians and funeral directors, 66-2701, 66-2703, 66-2706 to 66-2709, 66-2711, 66-2715.
28. Electrical Safety Law, 66-2802, 66-2803, 66-2805 to 66-2807, 66-2809 to 66-2812, 66-2814, 66-2815, 66-2817, 66-2819.
29. Massage therapists—regulation and licensing, 66-2902, 66-2904 to 66-2910, 66-2914.
30. Hearing aid dispensers, 66-3003, 66-3005 to 66-3007, 66-3009, 66-3011, 66-3014 to 66-3017, 66-3019, 66-3020, 66-3022.
31. Nursing home administrators, 66-3101, 66-3103 to 66-3107, 66-3109 to 66-3112.
32. Psychologists—licensing and regulation, 66-3201 to 66-3203, 66-3205 to 66-3209, 66-3211 to 66-3214.
33. Private investigators and private patrol operators, 66-3301 to 66-3321, 66-3327 to 66-3331.
34. Acupuncture Practice Act, 66-3401 to 66-3417.
35. Heating, Ventilation, and Air Conditioning Act, 66-3501 to 66-3509, 66-3511 to 66-3515.
36. Electrology, 66-3601 to 66-3608.
37. Radiologic technologists, 66-3701 to 66-3712.
38. Landscape Architect Registration and Licensing Act, 66-3801 to 66-3813.
39. Speech pathologists and audiologists, 66-3901 to 66-3913.
40. Licensure of criminal offenders, 66-4001 to 66-4005.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

Section

66-101. [Transferred.]

66-101.1. Purpose.

66-102. Organization of board—powers, meetings and records.

66-103. Definitions—examinations for certificates to practice—granting of certificates—registration without examination under certain circumstances.

66-106. Penalty for illegal practice or misuse of title.

66-107. Registration limited to individuals—employees of architects entitled to practice under supervision—exceptions—exemptions.

66-108. Fees payable by applicants for examination—disposition of fees.

66-109. Compensation of members of board—disposition and use of funds—report.

66-110. Annual fee of licensed architects.

66-111. Architects moving from state to be granted demit.

66-112. Revocation of certificate.

66-113. Architects on public buildings must hold certificate from board.

66-114. Plans for public buildings to have seal and signature of architect—insurance coverage.

66-101. [Transferred.]

Compiler's Notes

Section 24, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.3.

66-101.1. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977.

Title of Act

An act to describe the purpose of architecture licensing laws, define public building, provide for injunction of violations of such laws, revise the exemption provisions, prohibit other state agencies or political

subdivisions from charging architect license fees, make clear that any person rendering professional services on a public building must be licensed to practice architecture, and revise the requirement for errors and omissions insurance; amending sections 66-103, 66-106, 66-107, 66-110, 66-113, and 66-114, R.C.M. 1947; and repealing section 66-115, R.C.M. 1947.

66-102. (3230) Organization of board—powers, meetings and records.

(1) The board of architects must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer, and must have a seal.

(2) The president and secretary may administer oaths in the examination of applications for certificates, and to witnesses called before the board for the transaction of business under this act.

(3) The board shall meet during the first week of April of each year, and at other times, at places the board determines.

(4) The department of professional and occupational licensing must keep a record of proceedings of the board, and also a register of applicants for a certificate, with the name and age of applicants and the number of years spent in the study of architecture, and whether the applicant was

granted a certificate or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R. C. M. 1921; amd. Sec. 25, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board

of architects" in subsection (1) for "board of architectural examiners"; substituted "department of professional and occupational licensing" in subsection (4) for "board"; and made minor changes in phraseology and style.

66-103. (3231) Definitions—examinations for certificates to practice—granting of certificates—registration without examination under certain circumstances. (1) Except as provided in this act, no person may practice architecture in this state or use the title "architect" or "registered architect," or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this act.

(2) Unless the context requires otherwise, in this act:

(a) "Practice of architecture" means rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other service in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(b) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this act to practice architecture.

(c) "Building" means a structure intended primarily for human occupancy or use.

(d) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

(e) "Board" means the board of architects, provided for in section 82A-1602.3.

(f) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) A person wishing to practice architecture in this state shall apply to the department for a certificate to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience and a written examination as prescribed by the board in conformance with the standard national council of architectural registration boards examination and grading procedure. After examination the department shall, if the candidate has been found qualified, grant a certificate to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two (2) members of the board, and attested by the secretary, and have the seal of the board attached. However, an architect holding a valid and current license to practice in another state, territory or country will be granted a certificate to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. But no arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may,

if considered necessary, require an examination of applicants for a license from other states, after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R. C. M. 1921; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977.

Amendments

The 1973 amendment substituted "intended primarily for human occupancy or use" for "consisting of foundation, floors, walls, columns, girders, and roof, or a combination of any number of these parts, including relating mechanical and electrical equipment, with or without parts or appurtenances" at the end of subsection (c); substituted the second sentence of subsection (3) for sentences reading "Every person so applying shall submit to an examination of the following branches to wit: Arithmetic and elementary mathematics, knowledge of building materials and construction, structural, mechanical and electrical engineering phases of construction, architectural drawings, technical education and experience, and such other branches as the board may deem advisable. Said board shall cause

examination to be most scientific and practical, but of sufficient severity to test the candidate's fitness to practice architecture in this state"; deleted from the third sentence of subsection (3) a proviso allowing the president to grant interim certificates good until the next board meeting; and substituted the present proviso to the third sentence of subsection (3) for a proviso allowing the board to make reciprocal arrangements with other states.

The 1974 amendment inserted the first clause of subsection (2); inserted definitions of "Board" and "Department"; substituted "department" for "board" in two places in subsection (3); deleted a final paragraph relating to architects in practice prior to July 1, 1957; and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted subdivision (2)(d); redesignated former subdivisions (2)(d) and (2)(e) as subdivisions (2)(e) and (2)(f); and made a minor change in phraseology.

66-106. (3234) Penalty for illegal practice or misuse of title. (1) Any person who shall use the title "architect" or "registered architect" or any other words, letters, figures, or other device indicating or intending to imply that the person using the same is an architect, or who shall engage in the practice of architecture within the meaning of this act, or shall accept compensation for rendering architectural service, without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this act shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

(2) Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this act or rule of the board, it may, in addition to the remedies provided in subsection (1) and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977.

Amendments

The 1977 amendment added subsection (2).

66-107. (3235) Registration limited to individuals—employees of architects entitled to practice under supervision—exceptions—exemptions. (a) and (b) * * * [Same as parent volume.]

(c) Nothing in this act shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this act:

1 and 2. * * * [Same as parent volume.]

3. Any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings which are not intended for use or used as a public building.

4. The planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R. C. M. 1921; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977.

Compiler's Notes

Laws 1973, Ch. 439 amended this sec-

tion but made no change therein.

Amendments

The 1977 amendment rewrote subdivisions (c) 3 and (c) 4. For prior version, see parent volume.

66-108. (3236) Fees payable by applicants for examination—disposition of fees. (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to a second examination within one (1) year on payment of a reasonable fee, prescribed by the board.

(2) The money received from the applicant shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974.

Amendments

The 1973 amendment substituted "commensurate with the cost and set by the board" for "of twenty-five dollars (\$25)" in the first sentence of the first paragraph; corrected the name of the board; and substituted "a reasonable fee, pre-

scribed by the board" for "of five dollars (\$5) for each section of the said examination" at the end of the second sentence of the first paragraph.

The 1974 amendment substituted "department" for "secretary of said board" in the first sentence of subsection (1); substituted "deposited" for "turned over to the state treasurer of the state of Montana" in subsection (2); added "subject to section 82A-1603(6)" in subsection (2); and made minor changes in phraseology and style.

66-109. (3237) Compensation of members of board—disposition and use of funds—report. (1) Each member of the board is allowed the sum of twenty-five dollars (\$25) per day plus mileage in accordance with section 59-801 and travel expenses, as provided for in sections 59-538, and 59-539, while in the discharge of his actual duties.

(2) All fees and moneys received by the department for licenses from practicing architects shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975.

Amendments

The 1973 amendment increased the basic per diem from \$20 to \$25; substituted "in accordance with section 59-801 and a per diem allowance of actual and necessary expenses" for the former mileage rate of ten cents per mile; and deleted a third paragraph requiring the members to report under section 82-4002.

The 1974 amendment substituted "board" for "examining board" in subsection (1) and for "board of architectural examiners" in subsection (2); inserted "by the department" after "moneys received" in subsection (2); deleted "with the state treasurer" after "deposited" in subsection (2); added "subject to section 82A-1603(6)" in subsection (2); and made minor changes in phraseology and style.

The 1975 amendment substituted "travel expenses as provided for in sections 59-538, and 59-539" for "actual and necessary expenses" in subsection (1).

66-110. (3238) Annual fee of licensed architects. (1) A licensed architect in this state who desires to continue the practice of his profession shall annually, during the time he continues in this practice, pay to the department, during the month of July, a fee of \$20.

(2) The board of architects is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R. C. M. 1921; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977.

Amendments

The 1974 amendment substituted "de-

partment" for "treasurer of the state of Montana"; and made minor changes in phraseology.

The 1977 amendment added subsection (2); and made a minor change in style.

66-111. (3239) Architects moving from state to be granted demit. A licensed architect moving from the state may receive a demit from the board, and if he desires to re-establish himself in the state, the department will issue a certificate to him without examination, if he pays the regular license fee.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R. C. M. 1921; amd. Sec. 30, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of architectural examiners"; substituted "department" for "board"; and made minor changes in phraseology.

66-112. (3240) Revocation of certificate. (1) The board may revoke a certificate if proof satisfactory to the board is presented of the following: (a) The certificate was obtained through fraud or misrepresentation; (b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) The holder of the certificate has been found guilty by the board of gross incompetency or of recklessness in the planning or construction of buildings; (d) The holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct: (i) Willful departure in a material respect from approved plans or specifications without

the consent of the owner or his authorized representative; (ii) Willful violation of the building codes of this state or a political subdivision; (iii) Aiding or abetting an unlicensed person to violate or evade this act; or (iv) Sealing or signing plans or specifications not prepared under his direct supervision and control; or (e) The holder of the certificate has violated standards of professional conduct adopted by the board.

(2) A certificate may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing.

If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of thirty (30) days from the final decision adverse to the party.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R. C. M. 1921; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974.

Amendments

The 1973 amendment added clause (e) at the end of subsection (1); substituted "architects" for "architectural examiners" in the first sentence of the former second paragraph; and substituted "any judicial district" for "the first judicial district" in the former third paragraph. For prior version, see parent volume.

The 1974 amendment substituted "board" for "board of architectural examiners" in the first sentence of subsection (1); added subsection (2); deleted three paragraphs relating to proceedings for revocation of a certificate (see parent volume); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 7 of Ch. 439, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

66-113. Architects on public buildings must hold certificate from board.

A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies, or a county, city, or school district in this state unless the person is the holder in good standing of a certificate granted by the board entitling him to practice architecture in this state.

History: En. Sec. 1, Ch. 190, L. 1953; amd. Sec. 32, Ch. 350, L. 1974; amd. Sec. 6, Ch. 544, L. 1977.

Amendments

The 1974 amendment substituted "board"

for "board of architectural examiners"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "person" in two places for "architect"; and made a minor change in phraseology.

66-114. Plans for public buildings to have seal and signature of architect—insurance coverage. All architectural plans and specifications for public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

Each contract for architectural services for public buildings of the state of Montana, any agency thereof, any county, city, school district, or other subdivision of the state shall require errors and omissions insurance furnished by the architect. The amount and duration of the coverage shall be determined on each contract for service by an authorized agent of the contracting authority and the cost included in the contract.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977.

Amendments

The 1977 amendment completely rewrote the second paragraph. For prior version, see parent volume.

Repealing Clause

Section 8 of Ch. 544, Laws 1977 read "Section 66-115, R.C.M. 1947, is repealed."

66-115. Repealed.**Repeal**

Section 66-115 (Sec. 3, Ch. 190, L. 1953; Sec. 2, Ch. 167, L. 1961; Sec. 1, Ch. 209, L. 1965; Sec. 2, Ch. 131, L. 1967), relating

to time schedules for payments to architects, was repealed by Sec. 8, Ch. 544, Laws 1977.

CHAPTER 2—AUCTIONEERS AND AUCTION SALES**66-201 to 66-203.1. [Transferred.]****Compiler's Notes**

Sections 6 to 9, Ch. 263, Laws of 1977

renumbered these sections as Secs. 74-706 to 74-709.

66-204 to 66-207. [Transferred.]**Compiler's Notes**

Sections 10 to 13, Ch. 263, Laws of 1977

renumbered these sections as Secs. 74-710 to 74-713.

66-208 to 66-210. (4152 to 4154) Repealed.**Repeal**

Sections 66-208 to 66-210 (Secs. 3421 to 3423, Pol. C. 1895; Sec. 2, Ch. 265, L. 1977), relating to the place of holding

auctions and records on livestock auctions, were repealed by Sec. 17, Ch. 263, Laws 1977.

66-211. [Transferred.]**Compiler's Notes**

Section 5, Ch. 263 Laws of 1977 renumbered this section as Sec. 74-705.

66-212. (4156) Repealed.**Repeal**

Section 66-212 (Sec. 3425, Pol. C. 1895; Sec. 3, Ch. 265, L. 1977), overcharges by

auctioneers, was repealed by Sec. 17, Ch. 263, Laws 1977.

66-213. [Transferred.]**Compiler's Notes**

Section 1, Ch. 263, Laws of 1977 renumbered this section as Sec. 74-701.

66-214, 66-215. (7626, 7627) Repealed.**Repeal**

Sections 66-214, 66-215 (Secs. 2411, 2412, Civ. C. 1895), relating to completion of

auction sales and withdrawal of bids, were repealed by Sec. 17, Ch. 263, Laws 1977 and by Sec. 20, Ch. 265, L. 1977.

66-216. [Transferred.]**Compiler's Notes**

Section 3, Ch. 263, Laws of 1977 renumbered this section as Sec. 74-703.

66-217, 66-218. (7629, 7630) Repealed.

Repeal

Sections 66-217, 66-218 (Secs. 2414, 2415, Civ. C. 1895), relating to sales without re-

serve and fraud by seller, were repealed by Sec. 17, Ch. 263, Laws 1977 and by Sec. 20, Ch. 265, Laws 1977.

66-219. [Transferred.]

Compiler's Notes

Section 4, Ch. 263, Laws of 1977 renumbered this section as Sec. 74-704.

66-220 to 66-229. Repealed.

Repeal

Sections 66-220 to 66-229 (Secs. 1 to 10, Ch. 111, L. 1955; Sec. 1, Ch. 225, L. 1959; Secs. 22, 23, Ch. 391, L. 1973; Secs. 4, 5,

Ch. 265, L. 1977), relating to licenses for public auctions, were repealed by Sec. 17, Ch. 263, Laws 1977.

66-230. [Transferred.]

Compiler's Notes

Section 16, Ch. 263, Laws of 1977 renumbered this section as Sec. 74-716.

CHAPTER 4—BARBERS AND BARBERSHOPS

Section

66-401. Sanitation of barbershops, barber schools and barber colleges and definition of term barbershop.

66-401.1. Definitions.

66-403. Licensing and registration of barbers, barbershops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.

66-403.1. Refusal to issue or renew, or suspension of, licenses—hearing.

66-405. Display of certificate and license.

66-406. [Transferred.]

66-407. Officers, official seal.

66-408. Compensation.

66-409. Powers and duties.

66-410. Penalty.

66-411. Fees to be paid by apprentices, students, barbers, barbershops and training programs.

66-412. Barber's registration and license.

66-401. (3228.19) Sanitation of barbershops, barber schools and barber colleges and definition of term barbershop. (1) Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers and the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease. A barber, or barber apprentice may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public, and a person practicing barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber apprentice, or student of barbering to practice the occupation of a barber, or do barber work

while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber or barber apprentice, after securing his certificate, contracts a communicable, infectious, or contagious disease, endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber apprentice is no longer afflicted with the communicable, infectious, or contagious disease.

History: En. Sec. 1, Ch. 127, L. 1929; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board of barbers" for "board of barber examiners" throughout the section; substituted

"department of health and environmental sciences" for "state board of health" in subsection (1); substituted "this chapter" for "this act" in subsection (1); deleted a final subsection defining "barbershop"; and made minor changes in phraseology and style.

66-401.1. Definitions. Unless the context requires otherwise, as used in this chapter:

(1) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(2) "Board" means the board of barbers, provided for in section 82A-1602.5.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-401.1 by Sec. 34, Ch. 350, L. 1974.

66-403. (3228.21) Licensing and registration of barbers, barbershops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services. (1) A person is qualified to receive a certificate of registration to practice barbering only by serving as an apprentice barber and successfully passing an examination conducted by the department, subject to section 82A-1603, to determine his fitness to practice barbering.

(2) An apprentice, under this chapter, is a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in this state.

(3) An apprentice must file with the department an application setting forth the following information:

- (a) Full name and age of apprentice;
- (b) Name and place of approved barber school;
- (c) Dates of attendance at approved barber school;
- (d) Whether the applicant received a certificate of graduation from an approved barber school; and
- (e) Other information the board considers necessary.

(4) An apprentice applicant must successfully pass an apprentice examination conducted by the department, subject to section 82A-1603, and pay to the department the required fee. The department shall then

issue an apprentice barbering card which expires two (2) years from the date of examination.

(5) A registered apprentice may not independently practice or engage in the practice of barbering; however, he may do the acts which constitute the practice of barbering when done under the immediate personal supervision of a registered barber.

(6) A school or college of barbering may not be approved by the board unless it teaches the curriculum of the standardized schools approved by the national education council of barber examiners. Students of schools or colleges may, after attending the schools for a period of nine (9) months, make application to the department for an apprenticeship card to practice barbering under the immediate personal supervision of a licensed barber for the period of one (1) year.

(7) On completion of one (1) year of apprenticeship under the immediate personal supervision of a licensed barber, an apprentice must apply to the department to take the examination for a barber's certificate of registration. An apprentice may take the examination for a barber's certificate of registration as many as three (3) times before expiration of the apprentice card. If an apprentice fails to pass the examination for a barber's certificate of registration three (3) times, he shall surrender the apprentice card to the department and may not be authorized to do the acts which constitute the practice of barbering.

(8) A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college, or hold himself or itself out as engaging in or conducting a barbershop, school, or college, unless first licensed by the board. A barber school or college operating in this state must have in charge a person who has had ten (10) years' continuous experience as a barber. The owner of the school or college shall first secure a permit, granted by the board and issued by the department, to operate, on payment of an annual license fee of fifty dollars (\$50), and shall keep the permit prominently displayed, and shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of two thousand dollars (\$2,000), conditioned on the faithful compliance of the barber school or college with this chapter, and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them, or by their agents. Barber schools or barber colleges may not charge patrons for barbering services and materials rendered. All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college. All barber schools or colleges on receiving students shall immediately apply to the department for student permits on blank forms prescribed by the board.

(9) An application for a barbershop, school, or college license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license, and on payment to the department of the initial inspection fee, the board shall have an investiga-

tion and inspection made as to the character of the applicant, and on notice and after hearing shall report its findings to the department, which shall grant a license, if the board finds that the applicant is of good character, and that the proposed barbershop, school, or college is equipped and will be conducted as required under this chapter. The application must be granted or refused within thirty (30) days from the date of filing of the application or within fifteen (15) days after the hearing on the application if a hearing is held.

(10) A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter, and this certificate or license is not transferable as to person or place.

(11) Before a license is issued to conduct a barbershop, school, or college in this state the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot water tanks shall have not less than a two (2) gallon capacity with gravity pressure. Waste water shall be disposed of through some system, carrying it away from the building. This shall be done by sewer connections, or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition at all times.

(f) It must pay to the department the required fee.

(12) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state, and that employees observe the sanitary rules of the department of health and environmental sciences and the department and report to the department the name of a person practicing barbering therein, who has a communicable disease.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board of barber examiners" throughout the section; inserted "subject to section 82A-1603" in subsections (1) and (4); deleted "as defined by section 66-

402 of this code" from the end of subsection (1); substituted "this chapter" for "this act" throughout the section; substituted "board" for "board of barber examiners" in the second sentence of subsection (8); substituted "permit granted by the board and issued by the department" in the fourth sentence of subsection (8) for "secure from the board of barber examiners a permit"; substituted "prescribed by the board" for "provided by the board of

barber examiners" in the last sentence of subsection (8) and the first sentence of subsection (9); substituted "department of health and environmental sciences" for "state department of health" in subdivision (11)(a) and subsection (12); deleted two final subsections relating to denial of licenses (see parent volume); and made minor changes in phraseology, punctuation and style.

66-403.1. Refusal to issue or renew, or suspension of, licenses—hearing.

The board may, after notice and opportunity for a hearing, either refuse to issue or renew, or may suspend or revoke a barbershop, or barber school or college license for any one or combination of the following causes:

- (1) The violation of any of the provisions of subdivisions (a) through (e) of subsection 11 of section 66-403, subsection 12 of section 66-403, and section 66-405;
- (2) Conviction of a felony, shown by a certified copy of the record of the court of conviction;
- (3) Gross malpractice or gross incompetency;
- (4) Continued practice by a person knowingly having an infectious or contagious disease;
- (5) Advertising by means of knowingly false or deceptive statements;
- (6) Advertising, practicing, or attempting to practice under a trade name other than one's own;
- (7) Habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (8) The commission of any of the offenses described in section 66-409.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974.

66-404. (3228.22) Repealed.

Repeal

Section 66-404 (Sec. 4, Ch. 127, L. 1929; Sec. 2, Ch. 150, L. 1939), relating to bar-

bers in practice on date original act went into effect, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-405. (3228.23) Display of certificate and license. (1) A holder of a certificate of registration shall display it in a conspicuous place, adjacent to or near his work chair.

(2) A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

(3) A barbershop shall display a schedule of prices in a conspicuous place.

History: En. Sec. 5, Ch. 127, L. 1929; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board of barber examiners" in subsection (2); and made minor changes in phraseology, punctuation and style.

66-406. [Transferred.]**Compiler's Notes**

Section 38, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.5.

66-407. Officers, official seal. The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records. The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 7, Ch. 127, L. 1929; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "secretary" in the third

sentence and "board" in the fourth sentence; substituted "board" for "board of barber examiners" in the fourth sentence; deleted "with the state treasurer" after "deposited" and inserted "subject to section 82A-1603(6)" in the fourth sentence; and made minor changes in phraseology and punctuation.

66-408. (3228.26) Compensation. Each member of the board shall receive a compensation of twenty-five dollars (\$25) per day while attending board meetings plus travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred in attending meetings of the board.

History: En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975.

Amendments

The 1973 amendment inserted "thirty dollars (\$30) per day while engaged in the duties of inspecting barbershops and" in the first paragraph; added "or while engaged in the duties of inspecting barbershops" at the end of the first paragraph; and corrected the name of the board at the beginning of the second paragraph.

The 1974 amendment deleted "thirty dollars (\$30) per day while engaged in the

duties of inspecting barbershops" after "compensation of"; deleted "or while engaged in the duties of inspecting barbershops" at the end of the section; deleted former second and third paragraphs reading "The board of barbers shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary. The board shall make reports as provided in section 82-4002"; and made minor changes in phraseology.

The 1975 amendment substituted "travel expenses as provided for in sections 59-538, 59-539, and 59-801" for "legitimate and necessary expenses."

66-409. (3228.27) Powers and duties. (1) The department shall, subject to 82A-1603, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers, not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may approve price agreements establishing minimum prices for barber work, which are signed and submitted to the board by an organized group or groups of at least 75% of the barbers in a city or town, if the board, after ascertaining by investigations and proofs as the situation permits and requires, finds that the price agreement is just and will best

protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances to minimize the danger to the public health incident to this work. Under this chapter, a city or town includes the territory within its legal limits and the territory adjacent to it and lying within 3 miles of its legal limits. In determining whether a price agreement is just and will best protect the public health and safety, the board shall consider all conditions affecting the barber business in its relation to the public health and safety.

(3) In determining reasonable minimum prices, the board shall consider the necessary cost incurred in the city or town to maintain a barber-shop in a clean, healthful, and sanitary condition.

(4) After making an investigation, the board shall by order fix the minimum price for work usually performed in a barbershop in the city or town in which the price agreement has been signed. The board may, on the petition of 50% of the barbers of the city or town, readjust the minimum prices, and the new prices must be approved by 75% of the barbers in the city or town. This section does not apply to students who have been enrolled less than 9 months in a barber college in this state or who are not apprentice barbers.

(5) The board may adopt rules for the administration of this chapter.

(6) A person hired by the department to make an inspection of a barbershop, school, or college shall be recommended by the board. He shall receive \$30 per day plus travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977.

Amendments

The 1974 amendment substituted "department" for "board of barber examiners" in the first and last sentences of subsection (1); inserted "subject to section 82A-1603" in the first sentence of subsection (1); deleted a final sentence in subsection (1) relating to appointment of inspectors; substituted "board" for "board of barber

examiners" throughout subsections (2) through (5); substituted "this chapter" for "this act" in subsections (2) and (5); increased the required period of enrollment from six to nine months in the last sentence of subsection (4); added subsection (6); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (6) for "actual and necessary expenses"; and made minor changes in phraseology, punctuation and style.

66-410. (3228.28) Penalty. A person practicing the occupation of a barber without first having obtained a license, under this chapter, or a person knowingly employing a barber who has not obtained a license, or a person who falsely pretends to be qualified to practice the occupation of a barber, or a person who violates this chapter is guilty of a misdemeanor, and on conviction shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200), or imprisoned in the county jail for not less than ten (10) days nor more than ninety (90) days, or both. In addition, the board may, after hearing, suspend or revoke a barber's certificate of registration, or license to operate a barber-shop, school, or college, or both, by reason of the person willfully violating

this chapter or persistently failing to conform to the rules adopted by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974.

chapter" for "this act" throughout the section; substituted "board" for "board of barber examiners" in the last sentence; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "this

66-411. (3228.29) Fees to be paid by apprentices, students, barbers, barbershops and training programs. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card is \$25. The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering is \$20, and for the issuance of the certificate an additional \$10.

(2) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee set by the board in an amount not to exceed \$15 and based on clerical and administrative costs for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year the barber shall on renewal of the certificate of registration pay a penalty of \$10, in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for in this section. However, physically handicapped persons, trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a 9-month course in a reputable barber college are not required to pay fees, and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter. No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state.

(3) In addition to the fees and charges now provided by law, barber-shops heretofore established, and which have been under the inspection of the board shall pay an annual license fee set by the board in an amount not to exceed \$15 and based on clerical and administrative costs. Barber-shops hereafter established shall pay an initial inspection fee of \$25 for the first year or portion thereof, and shall pay an annual license fee set by the board in an amount not to exceed \$15.

(4) Barbershop, school, or college licenses expire on July 1 of each year, following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of \$10, and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of \$55.

Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter, shall pay an annual license fee of \$50 to the department, or a 10 day license fee of \$15, and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977.

Amendments

The 1971 amendment increased the fees specified in subsection (3) from \$3.00, \$15.00 and \$3.00 to \$5.00, \$20.00 and \$5.00 respectively.

Chapter 301, Laws of 1973, increased from \$5.00 to \$10.00 the fees specified at the end of subsection (1), in the first part of subsection (2), and in subsection (3); corrected the name of the board; and made minor changes in style.

Chapter 330, Laws of 1973, added the last paragraph to subsection (4).

The 1974 amendment substituted "department of social and rehabilitation services" in the fourth sentence of subsection (2) for "state bureau of civilian rehabilitation"; substituted "this chapter" in the fourth sentence of subsection (2) for "the barber act, or any of its amendments"; substituted "board" for "board of barbers"

in subsection (3); added the final sentence of the first paragraph of subsection (4); deleted a final sentence in the first paragraph of subsection (4) relating to the first year the act was in effect; deleted a paragraph in subsection (4) relating to penalties for failing to renew barbershop and barber school licenses; substituted "department" for "board of barbers" and "board" in the second paragraph of subsection (4); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "fee set by the board in an amount not to exceed \$15" in the first sentence of subsection (2) and in both sentences of subsection (3) for "fee of \$10"; inserted "and based on clerical and administrative costs" in the first sentence of subsections (2) and (3); substituted "regular renewal fee" at the end of the second sentence of subsection (2) for "regular fee of \$10"; increased the initial inspection fee in subsection (3) from \$20 to \$25; and made minor changes in punctuation and style.

Effective Date

Section 2 of Ch. 301, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 15, 1973.

66-412. (3228.30) Barber's registration and license. (1) A person may not practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice unless he first receives from the department a certificate of registration.

(2) It is unlawful to operate a barbershop, school, or college unless it has first been issued a license by the department under this chapter.

History: En. Sec. 12, Ch. 127, L. 1929; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board of barber examiners" in subsection (1) and for "board" in subsection (2); and made minor changes in phraseology and punctuation.

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section

66-501. [Transferred.]

66-501.1. Definitions.

66-503. Organization of board—meetings—powers and duties.

66-504. Practicing without license—temporary permits.

66-505. Applications to practice—fees for license.

66-506. Examinations—subjects embraced in.

66-507. Definition of chiropractic.

66-510.1. Unprofessional conduct.

66-510.2. Revocation or suspension of license.

66-510.3. Reconsideration of board action—fee for restoration of license.

66-511. Recordation of license—failure or refusal to record.

66-512. Renewal of license.

66-513. Disposition of fees—receipts and disbursements—reports—per diem and mileage.

66-501. [Transferred.]

Compiler's Notes

Section 45, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.7.

66-501.1. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Board" means the board of chiropractors, provided for in section 82A-1602.7.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-501.1 by Sec. 46, Ch. 350, L. 1974.

66-502. (3139) Repealed.

Repeal

Section 66-502 (En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3139,

R. C. M. 1921), relating to appointment of the board of chiropractic examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-503. (3140) Organization of board—meetings—powers and duties.

(1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena, and shall hold special meetings at times and places as a majority of the board designates. Not more than four meetings may be held in any one year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to licenses issued, and shall make rules necessary for the performance of its duties, and shall make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination as to the different schools of chiropractic. The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R. C. M. 1921; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977.

Amendments

The 1974 amendment substituted "board" for "board of chiropractic examiners" in subsection (1); substituted "department" for "secretary of the board" in the final sentence of subsection (3); deleted a sen-

tence from subsection (3) requiring the board to file a copy of its rules with the secretary of state; deleted a fourth paragraph relating to issuing each member of the board a license to practice chiropractic; and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted "on the first Tuesday of October in" before "each year" near the beginning of subsection (2); and made minor changes in style.

66-504. (3141) Practicing without license—temporary permits. (1) It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this act.

(2) When application for examination for license is filed with the department, under section 66-505, the board may authorize the department to issue a temporary permit to practice.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R. C. M. 1921; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977.

Amendments

The 1974 amendment deleted from subsection (1) a clause relating to chiropractors in practice on the date the original act was passed; substituted "department"

for "board" near the beginning of subsection (2); substituted "board may authorize the department to issue" in subsection (2) for "board may issue"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted "which is good until the next meeting of the board" at the end of subsection (2); and made a minor change in phraseology.

66-505. (3142) Applications to practice—fees for license. (1) A person wishing to practice chiropractic in this state shall make application to the department on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice, accompanying the same with proofs by diplomas, certificates, etc., and shall accompany the application with satisfactory evidence of good character and reputation.

(2) There shall be paid to the department, by an applicant for a license, a fee of \$50. Like fees shall be paid for a subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1933; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977.

Amendments

The 1974 amendment substituted references to department for references to board of chiropractic examiners in the first sentences of subsections (1) and (2); deleted references throughout subsection (1) to chiropractors in practice on the effective

date of the 1951 amendment to the act; substituted "board of education" for "Montana state board of education" near the middle of subsection (1); and made minor changes in phraseology, punctuation and style.

The 1977 amendment changed the deadline for making application from 15 days to 21 days prior to a meeting of the board in the first sentence of subsection (1); and deleted "twenty-five dollars (\$25) of which shall accompany the application and the remainder shall be paid on the issuance of the license" at the end of the first sentence of subsection (2); and made minor changes in style.

66-506. (3143) Examinations—subjects embraced in. (1) Examinations for a license to practice chiropractic shall be made by the department

ment subject to section 82A-1603, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, the subjects of which are as follows: anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer 75% of all questions asked, and if an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners, if the applicant meets the other requirements of this chapter and satisfactorily passes a clinical proficiency examination before the department, subject to section 82A-1603.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977.

Amendments

The 1974 amendment substituted "department subject to section 82A-1603" in

subsections (1) and (3) for "board"; substituted "may authorize the department to issue" in subsection (3) for "may grant"; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "clinical proficiency examination" near the end of subsection (3) for "practical examination"; and made minor changes in style.

66-507. (3144) Definition of chiropractic. (1) Chiropractic is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges, but does not include surgery or the prescription or use of drugs.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; amd. Sec. 1, Ch. 579, L. 1977.

Amendments

The 1977 amendment rewrote this section. For prior version, see parent volume.

66-510. (3147) Repealed.

Repeal

Section 66-510 (Sec. 3147, R.C.M. 1921; Sec. 2, Ch. 188, L. 1961; Sec. 51, Ch. 350,

L. 1974), relating to revocation of license, was repealed by Sec. 5, Ch. 516, Laws 1977.

66-510.1. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to Title 66, chapter 40.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting, in the practice of chiropractic, a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 15, chapter 21, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977.

practice of chiropractic; prohibiting municipalities and other political subdivisions of the state from imposing license fees or taxes for the practice of chiropractic; amending section 66-512, R.C.M. 1947; and repealing section 66-510, R.C.M. 1947.

Title of Act

An act to revise license renewal and disciplinary provisions relating to the

66-510.2. Revocation or suspension of license. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has, while under probation, violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board, if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person, at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 66-510.1 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation; or

(e) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977.

66-510.3. Reconsideration of board action—fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee of \$50 for the restoration.

History: En. 66-510.3 by Sec. 4, Ch. 516, L. 1977.

Repealing Clause

Section 5 of Ch. 516, Laws 1977 read "Section 66-510, R.C.M. 1947, is repealed."

66-511. (3148) Recordation of license—failure or refusal to record. (1) A person who receives a license from the department shall have it recorded in the office of the clerk and recorder of the county of which he resides, and shall have it recorded in the counties to which he subsequently moves for the purpose of practicing chiropractic.

(2) The failure or refusal on the part of the holder of a license to have it recorded before he practices chiropractic in this state, after having been notified by the department to do so, is sufficient grounds to revoke or cancel a license and render it void. The clerk and recorder shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When a license is presented to him for record, he shall stamp on its face his signed memorandum of the date when the license was presented for record.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R. C. M. 1921; amd. Sec. 52, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state board of chiropractic examiners" in subsections (1) and (2); substituted "clerk and recorder" for "recorder of deeds" in subsections (1) and (2); and made minor changes in phraseology and punctuation.

66-512. (3149) Renewal of license. (1) A license expires on September 1 of each year, and shall be renewed by the department, on payment of a renewal fee of not more than \$50, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors consisting of monitored classroom time conducted by instructors from accredited colleges of chiropractic in subjects designated and approved by the board. However, the board may authorize the department to issue renewals, but not con-

secutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees during the six (6) months preceding September 1, by examination, shall be granted renewal licenses without attending the educational programs.

(2) No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R. C. M. 1921; amd. Sec. 2, Ch. 129, L. 1933; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977.

Amendments

The 1974 amendment substituted "department" for "board" in the first sentence; substituted "board" for "state board of chiropractic examiners" in two places in the first sentence; substituted "board may authorize the department to issue" for "board may grant" in the second sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "not more than \$50" in the middle of the first sentence for "not less than five dollars (\$5) nor more than twenty-five dollars (\$25)"; substituted "attended and success-

fully completed a postgraduate educational program for chiropractors consisting of monitored classroom time conducted by instructors from accredited colleges of chiropractic in subjects designated and approved" in the first sentence for "attended an educational program for chiropractors conducted by a school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of a state, or an educational program approved"; deleted the last two sentences of subsection (1) which read: "Failure to renew a license does not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license. This section does not prevent a renewal of the license if in the preceding year for any reason, at least one of the educational programs is not conducted in this state"; added subsection (2); and made a minor change in style.

66-513. (3150) Disposition of fees—receipts and disbursements—reports—per diem and mileage. (1) Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

(3) The members of the board shall receive twenty-five dollars (\$25) for each day during which they are actually engaged in the discharge of their duties, plus mileage as provided in section 59-801, and reimbursement for travel expenses, as provided for in sections 59-538, and 59-539.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R. C. M. 1921; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. Sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975.

Amendments

The 1974 amendment substituted "department" for "state board of chiropractic examiners" in subsection (1) and for "secretary-treasurer" and "board" in subsection (2); deleted "with the state treasurer" after "deposited" in subsection (1); substituted "board" for "state board of chi-

ropractic examiners" in subsection (1); added "subject to section 82A-1603(6)" to the end of subsection (1); substituted "mileage as provided in section 59-801, and reimbursement for actual and necessary expenses incurred" in subsection (3) for "mileage at the rate of ten cents (\$.10) per mile for each mile necessarily traveled in going to and from any meeting of said board"; and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, and 59-539" for "actual and necessary expenses incurred" at the end of subsection (3).

66-514. (3151) Repealed.

Repeal

Section 66-514 (En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3151, R. C. M. 1921; Sec. 24, Ch. 177, L. 1965),

relating to dismissal of members of the state board of chiropractic examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

CHAPTER 6—PODIATRY—REGULATION OF PRACTICE

Section

- 66-601. Definitions.
- 66-602. License—amputations not allowed.
- 66-603. Examinations — schools — fees — nonresident practitioners — national podiatry board examinations.
- 66-604. Examination—fees.
- 66-605. Designation of licensees—renewals—reissuance of license—display of license required—recording necessary.
- 66-606. Refusal or revocation of license.
- 66-607. Deposit of moneys collected.
- 66-608. Compensation of board—expenses.

66-601. (3154.1) Definitions. Unless the context requires otherwise, in this act: (1) "Chiropody" or "podiatry" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) "Podiatrist" means one practicing podiatry.

(3) "Board" means the board of podiatry examiners, provided for in section 82A-1602.6.

(4) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 2, L. 1923; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted the introductory clause; added subdivisions (2) through (4); and made minor changes in phraseology and punctuation.

66-602. (3154.2) License—amputations not allowed. It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in a sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this act. A podiatrist may not amputate the human foot or toe, or administer an anesthetic other than local.

History: En. Sec. 2, Ch. 2, L. 1923; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "podiatrist" and "podiatry" for "chiropodist"

and "chiropody" throughout the section; deleted "as defined in this act" after "in any manner" near the end of the first sentence; substituted "board" for "state board of chiropody medical examiners"; and made minor changes in phraseology and punctuation.

66-603. (3154.3) Examinations — schools — fees — nonresident practitioners—national podiatry board examinations. Examinations shall be

held at places and times the board directs. Persons who wish to begin the practice of podiatry in this state, shall make application on a form authorized by the state board of podiatry examiners and furnished by the department, for a license to practice podiatry. The license may be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least 4 years or equivalent time in quarter or semester hours of instruction in an accredited college of podiatry recognized as being in good standing by the board, and successfully passed the examination. A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege, and by payment of \$50 to the department. A license may be granted, at the discretion of the board and upon payment of \$50 to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board.

History: En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977.

Amendments

The 1971 amendment deleted "of being at least twenty-one (21) years of age" after "satisfactory proof" in the third sentence of former subsection (2); and made minor changes in phraseology and style.

The 1973 amendment changed all references to chiropody to podiatry; changed the name of the state board of chiropody medical examiners to state board of podiatry examiners; increased the number of podiatrists to be selected under the first section of former subsection (1) from two to three; and added a last sentence reading "Wherever the appellation chiropodist or chiropody appears in the Montana statute it shall mean podiatrist or podiatry."

The 1974 amendment deleted a first subsection relating to creation of the board of podiatry examiners; substituted "board" for "state board of podiatry examiners" in two places; substituted "furnished by the department" for "furnished by said state board of medical examiners" in the second

sentence; deleted a sentence relating to podiatrists in practice prior to the effective date of the 1939 act; substituted "department" for "secretary of the board of medical examiners" in the final sentence; deleted the former last sentence added by the 1973 amendment; and made minor changes in phraseology, punctuation and style.

The 1975 amendment deleted "semianually" after "shall be held" in the first sentence; substituted "The license may be granted" for "This application shall be granted" at the beginning of the third sentence; substituted "four (4) years or equivalent time in quarter or semester hours of instruction" for "two (2) years of instruction" in the third sentence; substituted "college of podiatry" for "school of podiatry"; inserted "and successfully passed the examination" at the end of the third sentence; deleted a provision that an accredited school of podiatry must require four years of instruction; inserted "and practiced" after "had a valid license" in the fourth sentence; inserted "preceding" before "years" in the fourth sentence; and added the final sentence.

The 1977 amendment substituted "state board of podiatry examiners" for "state board of medical examiners" in the second sentence; and made minor changes in style.

66-604. (3154.4) Examination—fees. A person not exempt from examination under section 66-603 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, histology, bacteriology, pharmacy, neu-

rology, surgery (minor), podiatry, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license. The minimum requirements for a license are a general average of seventy-five per cent (75%) in all the subjects involved, and not less than fifty per cent (50%) in any one subject. An examination and license fee of thirty-five dollars (\$35) shall be paid to the department. An applicant failing in the examination and being refused a license is entitled within six (6) months of the refusal to a re-examination, but one re-examination exhausts his privilege under the original examination.

History: En. Sec. 4, Ch. 2, L. 1923; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "po-

diatry" for "chiroprody" throughout the section; substituted "department" for "secretary of the state board of medical examiners" in the third sentence; and made minor changes in phraseology, punctuation and style.

66-605. (3154.5) Designation of licensees—renewals—reissuance of license—display of license required—recording necessary. A license issued under this act shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof, nor any other designation or title except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot," so as not to mislead the public with respect to their right to treat other portions of the body. Licenses shall be recorded by the department the same as other medical licenses. The person receiving the license shall have it recorded in the office of the county clerk in the county in which he resides, and the record shall be endorsed on it. If the person licensed moves to another county to practice, he shall record the license in the same manner in the county into which he moves, and the county clerk is entitled to charge and receive the usual fee for making this record. A renewal license fee set by the board in an amount not to exceed \$25 shall be paid annually on July 1 of each year, and if not paid within 3 months, the license shall be revoked and may be reissued only on original application and payment of a fee of \$35. Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice.

History: En. Sec. 5, Ch. 2, L. 1923; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977.

Amendments

The 1974 amendment substituted references to podiatrists for references to chi-

ropodists; substituted "department" for "secretary of the state board of medical examiners"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment changed the renewal fee from \$3 to an amount set by the board not to exceed \$25.

66-606. (3154.6) Refusal or revocation of license. The board may, after notice and opportunity for a hearing, refuse to grant, renew, or it may revoke a license under this act to a person, otherwise qualified, who obtained the license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patients or in his advertisements, for habitual intoxication, for unprofessional and immoral conduct, or for selling or giving away alcohol or drugs for an

illegal purpose, but the board may authorize the department to reissue a license after six (6) months, if in its judgment the act, acts, or conditions of disqualification have been remedied.

History: En. Sec. 6, Ch. 2, L. 1923; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "state board of chiropody medical ex-

aminers" at the beginning of the section; inserted "notice and opportunity for" before "hearing" near the beginning of the section; inserted "may authorize the department to" before "reissue" near the end of the section; and made minor changes in phraseology and punctuation.

66-607. (3154.7) Deposit of moneys collected. All fees shall be collected by the department and deposited in the earmarked revenue fund for the use of the state board of podiatry examiners, subject to 82A-1603(6).

History: En. Sec. 7, Ch. 2, L. 1923; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 101 and once by Ch. 176. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "de-

partment" for "secretary of the state board of medical examiners"; deleted a clause relating to payment of moneys to the state treasurer; added "subject to section 82A-1603 (6)"; and made minor changes in phraseology.

Chapter 101, Laws of 1977, substituted "All fees" at the beginning of the section for "Fees and licenses"; and made a minor change in style.

Chapter 176, Laws of 1977, substituted "podiatry examiners" for "medical examiners" near the end of the section; and made a minor change in style.

66-608. (3154.8) Compensation of board—expenses. Each member of the board shall receive for his services \$5 per diem and travel expenses, as provided for in 59-538, 59-539, and 59-801. Other contingent expenses, necessarily incurred, shall be paid by the state department in the same manner as other expenses of the state board of podiatry examiners.

History: En. Sec. 8, Ch. 2, L. 1923; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977.

Amendments

The 1974 amendment substituted "board" for "board of examiners" at the beginning of the section; deleted "the secretary" after "except" at the beginning of the section; deleted "while the secretary shall receive his necessary expenses for services which cannot be performed at the capital" from the end of the first sentence; deleted "All printing, postage and" at the beginning of the second sentence; substituted

"department" for "state board of medical examiners" in the second sentence; and made minor changes in phraseology.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539 and 59-801" for "necessary traveling and incidental expenses" at the end of the first sentence.

The 1977 amendment deleted "except the physician members, who are otherwise paid for the performance of their duties as medical examiners" after "Each member of the board" at the beginning of the first sentence; substituted "state board of podiatry examiners" for "state board of medical examiners"; and made minor changes in style.

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section

- 66-801. License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school—registration of schools of cosmetology.
- 66-802. Definitions.
- 66-803. Requirements for practicing or teaching cosmetology or operating a school of cosmetology.

- 66-804. [Transferred.]
- 66-805. Meeting—officers to be selected.
- 66-806. Power of board to adopt rules.
- 66-807. Registration—licenses.
- 66-808. Examinations.
- 66-808.1. Reciprocity.
- 66-809. Compensation of members of board—deposit of receipts in state treasury.
- 66-811. Powers and duties of the board to refuse, revoke, or suspend licenses.
- 66-812. Sanitary rules.
- 66-813. Inspector of beauty parlors.
- 66-813.1. Inspection fees—temporary permit.
- 66-815. Fees.
- 66-816. Duration and renewal of licenses and certificates—delinquent renewal fee.
- 66-818. Exemptions.

66-801. (3228.1) License required to practice or teach cosmetology or operate a beauty shop, cosmetological establishment or school—registration of schools of cosmetology. No person may practice or teach cosmetology without a license and no place may be used or maintained for the teaching of cosmetology for compensation, except under a certificate of registration, and no person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license. No manager-operator license may be issued unless the applicant has been actively engaged in or teaching the practice of cosmetology in this state for a period of one (1) year preceding the application in addition to possessing the other requirements for a practitioner or teacher of cosmetology. A person, firm, copartnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department of professional and occupational licensing for a certificate of registration and license. The application shall be accompanied by the annual registration fee. No license may be issued until the inspection fees required in section 66-813.1 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 85 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 85, Laws of 1974, added the last sentence.

Chapter 350, Laws of 1974, substituted "department of professional and occupational licensing" in the third sentence for "board"; and made minor changes in phraseology and punctuation.

66-802. (3228.2) Definitions. Unless the context requires otherwise, in this act: (1) "Practice and teaching of cosmetology" includes work generally and usually included in the term "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, or hands. However, the practice and teaching of cosmetology does not include (1) itinerant cosmetologists who perform their services without compensation for demonstration purposes, in a regularly established store or place of business, holding a license from this state as a store or place of business nor (2)

cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology, or the occupation of a hairdresser and cosmetician or cosmetologist, and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists, provided for in section 82A-1602.8.

(4) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 2, Ch. 104, L. 1929; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 175 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not

appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 175, Laws of 1974, made minor changes in phraseology.

Chapter 350, Laws of 1974, inserted the introductory sentence; added subdivisions (3) and (4); and made minor changes in phraseology, punctuation and style.

66-803. (3228.3) Requirements for practicing or teaching cosmetology or operating a school of cosmetology. (1) Before one may practice or teach cosmetology, or a person, firm, copartnership, or corporation may operate a school of cosmetology, the person, firm, copartnership, or corporation must obtain a license or certificate of registration from the department. To be eligible to take the examination to practice cosmetology the applicant must not be less than eighteen (18) years of age, a graduate of the eighth grade, and of good moral character. The applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than fourteen (14) months, and must have received a diploma from the beauty school, or must have completed the course of study in cosmetology prescribed by the board of education. The person qualified must file with the department a written application to take the examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the department, and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

(2) Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(a) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction.

(b) Meet the following requirements:

(i) He must have an operator's license to practice cosmetology issued by the department, been actively engaged as a beauty operator for one (1) continuous year immediately prior to taking the examination, and have

received a diploma from a registered school of cosmetology approved by the board certifying satisfactory completion of five hundred (500) hours of student teacher training; or

(ii) He must have been actively engaged as a beauty operator for three (3) continuous years immediately prior to taking the teachers' examination.

(3) The applicant must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board and given by the department, subject to section 82A-1603. The license must be renewed annually under section 66-816.

(4) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) Sooner than six (6) months after the date of the second failure; or

(b) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

(5) The board may authorize the department to grant to graduates of registered schools of this state on the payment of the fee prescribed by law, a temporary license authorizing the graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the department, and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from a registered school of this state. The temporary licenses are not renewable.

(6) No person, firm, copartnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(7) No teacher or student teacher may be permitted to practice cosmetology on the public in a school. A school that enrolls student teachers for a course of student teacher training may not have at any one time more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(8) No school for teaching cosmetology may be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(a) Have in its employ a licensed teacher who is, at all times, in the immediate supervision of the work of the school, or other teachers the board determines are necessary for the proper conduct of the school. There may not be more than twenty-five (25) students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than two thousand (2,000) hours, and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used, wholly or in part for a school of cosmetology.

(f) Licenses or certificates of registration may be refused, revoked, or suspended, as provided in section 66-811.

(g) The board may make further rules necessary for the proper conduct of schools of cosmetology.

(h) The board shall require of the person, firm, copartnership, or corporation operating a school to furnish a good and sufficient bond in the amount of five thousand dollars (\$5,000) and in a form and manner prescribed by the board.

(i) No professional beauty shop may be operated in connection with a school of cosmetology.

(j) The board may, by rule, establish suitable curriculum for teachers' training in registered schools of cosmetology.

(9) If a licensee contracts a communicable disease, endangering the public health, the board shall, on proof of it, cancel or suspend his license until the licensee can secure a physician's certificate showing that he is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974.

Amendments

The 1971 amendment deleted a requirement that an applicant for a license "Be twenty-one (21) years of age or older."

Chapter 268, Laws of 1973 increased the fee for a temporary license pending examination from two dollars to four dollars and added "and the results are announced" at the end of the first sentence of subsection (5).

Chapter 310, Laws of 1973, extended the maximum length of a beauty school course from twelve to fourteen months in subsection (1); substituted "the fee prescribed by law" for "a fee of two dollars" in the first sentence of subsection (5); deleted

"extending over a period of ten (10) consecutive months" following "two thousand (2,000) hours" in subdivision (8)(c); and inserted "Licenses or" at the beginning of subdivision (8)(f).

The 1974 amendment inserted the numerical subsection designations and revised the numbering of subdivisions accordingly; substituted references to department throughout the section for references to state board; substituted "board of education" in the third sentence of subsection (1) for "state board of education, ex officio regents of the university of Montana, for the northern Montana college"; substituted "department" for "state of Montana" in subdivision (2)(b)(i); substituted "given by the department, subject to section 82A-1603" in subsection (3) for "given by the board"; substituted "board may authorize the department to grant" in subsection (5) for "board may grant"; and made minor changes in phraseology, punctuation and style.

66-804. [Transferred.]

Compiler's Notes

Section 66-804 was redesignated as sec-

tion 82A-1602.8 and amended by Sec. 1, Ch. 196, Laws 1973.

66-805. (3228.5) Meeting—officers to be selected. The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

History: En. Sec. 5, Ch. 104, L. 1929; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "The

board shall annually, before March 1"; for "The state board shall annually, on or before the first of March"; and made minor changes in phraseology.

66-806. (3228.6) Power of board to adopt rules. (1) The board shall prescribe rules for the conduct of its business; the qualification, examination, and registration of applicants to practice or teach cosmetology; applicants for manager-operator licenses; the regulation and instruction of apprentices and students; the conduct of schools of cosmetology for apprentices and students; and generally for the conduct of the persons, firms, or corporations affected by this act.

(2) The board shall adopt a seal and authenticate its acts.

History: En. Sec. 6, Ch. 104, L. 1929; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977.

Amendments

The 1974 amendment substituted "board" at the beginning of subsection (1) for "Montana state examining board of beauty culturists [cosmetology]"; substituted "chapter" in the first sentence of subsec-

tion (2) for "act"; inserted "request the department to, and the department shall" near the beginning of the second sentence of subsection (3); added subsection (6); and made minor changes in style, punctuation and phraseology.

The 1977 amendment deleted subsections (1) to (4); and redesignated former subsections (5) and (6) as subsections (1) and (2). For prior version, see parent volume and 1974 amendment note.

66-807. (3228.7) Registration—licenses. If the board finds that an applicant for examination, or for certificate of registration, has complied with the requirements of this act and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this act.

History: En. Sec. 7, Ch. 104, L. 1929; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "authorize the department to" before "issue" near the middle of the section; and made minor changes in phraseology.

66-808. (3228.8) Examinations. (1) Examinations for operator's license shall be held at least two (2) times a year and not more than five (5) times a year and for teacher's license once each year, at a place and time specified by the board. The examinations shall be conducted by the department, subject to section 82A-1603. The examinations may not be confined to a specific method or system.

(2) Physically handicapped persons trained for cosmetology by the department of social and rehabilitation services shall, for a period of one (1) year immediately following their graduation, be exempt from the examination and the fees described in section 66-815. On certification from the department of social and rehabilitation services that a department of

social and rehabilitation services beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

History: En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "conducted by the department, subject to section 82A-1603" in the second sentence of subsection (1) for "conducted by said state

board or by examiners appointed by a majority of said board for such purpose"; deleted a former third sentence from subsection (1) relating to the qualifications of examiners; substituted references to the department of social and rehabilitation services in subsection (2) for references to the state bureau of vocational rehabilitation; and made minor changes in phraseology, punctuation and style.

66-808.1. Reciprocity. A person who is licensed to practice cosmetology in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as a cosmetologist in that state.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977.

Title of Act

An act to provide for or change fees for application, license, examination, renewal, late renewal, reciprocity, certification, and registration for applicants, licensees, or registrants of the boards of horse racing, barbers, podiatry examiners, cosmetologists, medical examiners, pharmacists, public accountants, real estate and sanitarians of the department of professional and occupational licensing; to de-

fine reciprocity eligibility for board of cosmetologists applicants and impose a fee; to provide that no license fee or tax may be imposed on real estate brokers or salesmen by a municipality or other subdivision of the state; limiting travel authority of the board of real estate; specifying the director's authority over contracts and expenditures; providing for an immediate effective date; amending sections 62-505, 66-411, 66-605, 66-815, 66-1042, 66-1506, 66-1508, 66-1826, 66-1934, 66-2909, 66-3608, 69-3416, and 82A-1604, R.C.M. 1947.

66-809. (3228.9) Compensation of members of board—deposit of receipts in state treasury. Each member of the board may receive, as compensation for his services, the sum of \$25 per day for each day in actual attendance at any meeting of the board. In addition, each member shall be reimbursed for travel expenses, as provided for in sections 59-538, 59-539, and 59-801, necessarily incurred in the performance of official duties. All fees collected by the department under this act, shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 9, Ch. 104, L. 1929; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977.

Amendments

Chapter 224, Laws of 1974, increased the daily compensation for attendance of board

members from \$20 to \$25; and made minor changes in phraseology.

Chapter 350, Laws of 1974, inserted "subject to section 82A-1603 (6)" in the last sentence; deleted three sentences relating to compensation of the secretary of the board and its examiners, and expenses of board members; and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-

538, 59-539, and 59-801" for "his expenses" in the second sentence; and substituted "official duties" for "his duties" at the end of the second sentence.

The 1977 amendment substituted "may receive" for "shall receive" near the beginning of the section; and made minor changes in phraseology and style.

66-811. (3228.11) Powers and duties of the board to refuse, revoke, or suspend licenses. The board may refuse to issue, refuse to renew, or may revoke, or suspend a license in any one of the following cases: (1) Failure of a person, firm, copartnership, or corporation operating a cosmetological establishment or school of cosmetology to comply with this act; (2) failure to comply with the sanitary rules, adopted by the board and approved by the department of health and environmental sciences, for the regulation of cosmetological establishments or schools of cosmetology; (3) gross malpractice; (4) continued practice by a person knowingly having an infectious or contagious disease; (5) habitual drunkenness, or habitual addiction to the use of morphine or any habit-forming drugs; (6) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or (7) failure to display the license. However, the board may not refuse to authorize the department to issue or renew a license, or revoke or suspend a license already issued, until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department of health and environmental sciences" in item (2) of the first sentence

for "state board of health"; substituted the last sentence of the section for a proviso prohibiting denial or suspension of a license without ten days' notice; deleted provisions describing adequate notice and a party's right to bring a civil action against the board; and made minor changes in phraseology, punctuation and style.

66-812. (3228.12) Sanitary rules. The board, subject to the approval of the department of health and environmental sciences, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creating and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; amd. Sec. 72, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of health and environmental sciences" for "state board of health"; and made minor changes in phraseology.

66-813. (3228.13) Inspector of beauty parlors. The department shall appoint one (1) or more inspectors who are licensed to practice under this act, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

History: En. Sec. 13, Ch. 104, L. 1929; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department for references to the state board of health; deleted a sentence relating to compensation of inspectors; and made minor changes in phraseology.

66-813.1. Inspection fees—temporary permit. Upon application for a license, any cosmetological establishment must pay an initial inspection fee of \$25. The board may authorize the department to grant to a cosmetological establishment, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

History: En. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977. **Amendments**

Title of Act

An act providing that a fee shall be required for initial inspection prior to licensure of beauty salons and beauty colleges by amending section 66-801, R. C. M. 1947.

The 1977 amendment deleted "plus actual and necessary expenses of the inspector" at the end of the first sentence; substituted the second and third sentences for "This inspection is required prior to issuance of a license"; and made minor change in style.

66-815. (3228.15) Fees. Fees for licenses and certificates of registration shall be paid to the department not to exceed the following respective amounts prescribed by the board. (1) A student enrolling in a registered cosmetology school shall pay a registration fee of \$7 to the department.

(2) An applicant for examination to practice shall pay at the time of the application a fee of \$40.

(3) An applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of \$8 for a temporary license to practice as an operator.

(4) An applicant for examination to teach shall pay at the time of the application a fee of \$60.

(5) A person practicing cosmetology as an operator shall pay a fee of \$12 for the issuance of a license.

(6) An applicant for a manager-operator license shall pay a fee of \$20 for the issuance of a license.

(7) An applicant for an itinerant license as a cosmetologist shall pay a fee of \$100.

(8) A person, firm, copartnership, or corporation owning, operating, or conducting a cosmetological salon shall pay the sum of \$20 for the issuance of the certificate of registration.

(9) A person teaching or instructing cosmetology shall pay a fee of \$20 for the issuance of a license.

(10) A person, firm, copartnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of \$100 for a certificate of registration.

(11) A person, firm, copartnership, or corporation owning, operating, or conducting an advanced school of cosmetology shall pay the sum of \$100 for a certificate of registration.

(12) A person, firm, copartnership, or corporation owning, operating, or conducting a teacher-training unit in a school of cosmetology shall pay the sum of \$100 for a certificate of registration.

(13) An applicant for reciprocity licensure shall pay a fee of \$100.

(14) Duplicate licenses or certificates of registration shall be issued on payment of \$4 and proof of necessity. The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department. No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963; amd. [Sec. 1,] Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977.

Amendments

The 1971 amendment substantially rewrote this section and generally increased the fees. For previous text, see parent volume.

The 1974 amendment inserted the numerical subdivision designations; substituted "department" for "Montana state examining board of cosmetology" throughout the section; and made minor changes in phraseology and punctuation.

The 1977 amendment doubled the maximum fees provided in subdivisions (1) through (12) and (14); inserted subdivision (13); redesignated former subdivision (13) as subdivision (14); and inserted "unless otherwise provided by board rule" in the second sentence of subdivision (14).

66-816. (3228.16) Duration and renewal of licenses and certificates—delinquent renewal fee. (1) Licenses and certificates shall be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year an active teacher, either full time or part time, must have successfully completed thirty (30) hours professional teacher training at a school approved by the board as a prerequisite to the renewal of the teacher's license.

(b) Persons holding a teacher's license, but not actively engaged either full time or part time in teaching cosmetology during the preceding year, may renew the license by paying the required fee.

(c) Persons holding a teacher's license but not actively engaged in teaching cosmetology either full time or part time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete thirty (30) hours professional teachers' training at a school approved by the board before resuming active teachers' training. However, the foregoing provisions do not prevent the board, under rules

it adopts from permitting a person holding a teacher's license and not actively engaged either full time or part time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee of \$10 shall be charged in addition to other fees fixed by law for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline. The department shall notify license and certificate holders of the expiration date of licenses and certificates not less than 30 days before the expiration date, and call attention to the penalty imposed for failure to renew a license or certificate by the date of expiration.

History: En. Sec. 16, Ch. 104, L. 1929; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977.

Amendments

The 1974 amendment substituted "department" for "board" in subsection (3); and made minor changes in phraseology, punctuation and style.

The 1977 amendment added "unless otherwise provided by rule" to the first sentence of subsection (1); substituted "unless otherwise provided by rule or renewed for the next year or renewal period" at the

end of the second sentence of subsection (1) for "unless renewed for the next year"; inserted "unless otherwise provided" in the third sentence of subsection (1); added "but the right to renew an expired license or certificate terminates after 10 years of nonpayment" to the fourth sentence of subsection (1); added the last two sentences to subsection (1); increased the fee from \$2.50 to \$10 in subsection (3); added "or other predetermined renewal deadline" to the first sentence of subsection (3); inserted references to certificates in the last sentence of subsection (3); and made minor changes in phraseology and style.

66-818. (3228.18) Exemptions. Nothing in this act prohibits service in case of emergency or domestic administration without compensation; services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair.

History: En. Sec. 18, Ch. 104, L. 1929; amd. Sec. 2, Ch. 101, L. 1977.

Amendments

The 1977 amendment substituted "or

mortuary science" for "and licensed undertakers"; deleted "by barbers" from the end of the section; and made minor changes in phraseology, punctuation and style.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

Section

66-901. [Transferred.]

66-901.1 Definitions.

66-904. Meetings—notice—quorum—funds—duties—report.

66-905. Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers.

66-906. Certificate to be registered in counties where practicing—replacing lost certificates—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.

66-908. Failure to register certificate as prima facie proof of lack of authority to practice dentistry.

66-909. Compensation and expenses allowed board members—limitation on duration of examination meetings—disbursement of funds.

66-910. Practice of dentistry defined—persons conducting business through licensed dentist—exceptions.

66-911. Duty of county attorney to enforce act—attorney general's duty on appeal—jurisdiction of justice courts—injunction.

- 66-913. Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension.
- 66-919. Practicing dentistry without certificate, penalty for—disposition of fines.
- 66-920. Affiliation with national association authorized—delegate—expenses allowed.
- 66-921. Dental hygiene defined—dental hygienists—qualifications—examination—fee—registration—certificate form—re-examination—powers and limitations—revocation of license.
- 66-922. Annual license fee for dental hygienists—revocation of license.
- 66-923. Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists—reciprocity.

66-901. [Transferred.]

Compiler's Notes

Section 76, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.9.

66-901.1. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of dentists, provided for in section 82A-1602.9.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-901.1 by Sec. 77, Ch. 350, L. 1974.

66-902. (3115.2) Repealed.

Repeal

Section 66-902 (Sec. 2, Ch. 48, L. 1935), relating to oath of office and removal of

members, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-904. (3115.4) Meetings—notice—quorum—funds—duties—report.

(1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five (5) days' notice must be given by the department to board members of the time and place of the meeting of the board. Three (3) members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest. Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(2) The department shall keep a complete record of meetings and proceedings of the board, and shall keep a complete account of moneys received and disbursements made by the department.

History: En. Sec. 4, Ch. 48, L. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department for references to the board and the secretary-treasurer of the board; added "subject to section 82A-1603(6)" to the end of the last sentence of subsection (1); deleted provisions pertaining to reports by the board; and made minor changes in phraseology, punctuation and style.

66-905. (3115.5) Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers. (1) A person desiring to practice dentistry in

this state shall file in his full name, an application for examination with the department at least twenty (20) days before the date set by the board for the commencement of the examination. At the time of making the application the applicant shall (a) pay to the department a fee of fifty dollars (\$50), furnish the department with at least three (3) affidavits of good moral character satisfactory to the board, present to the department his diploma or satisfactory evidence of having graduated from a recognized dental school or college, which has been approved by the board, and furnish the department a recent photograph of the applicant.

(2) The board may, in its discretion, permit a dental student who has successfully completed his junior year in a recognized dental school, and who files proof satisfactory to the board that he has the preliminary education described in this section, to take a written examination in the subjects he has completed, and satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee of fifty dollars (\$50) for this examination, which shall apply on the final examination taken by the applicant.

(3) The board shall make rules governing examinations for a license to practice dentistry in this state. The examinations are open to an applicant meeting the requirements of this act. The board shall also provide, by rule, reasonable notice of the time and place where examinations are held. An examination shall be held at least once a year.

(4) The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics and endodontics, and any additional subjects pertaining to dental service. The written examination may be supplemented by oral examinations. Demonstrations of the applicant's skill in operative and prosthetic dentistry is also required. The examination shall be conducted under oath or affirmation by the department, subject to section 82A-1603, and any member of the board may administer the oath or affirmation. The board may recognize a certificate granted by the national board of dental examiners instead of, or subject to the examinations the board requires.

(5) Applicants successfully passing the examination shall be registered as licensed dentists in the department register and, on payment of an additional fifteen dollars (\$15) shall receive a certificate signed by the members of the board, in a form prescribed by the board.

(6) Examination papers of an applicant shall be retained two (2) years by the department and may then be destroyed, and while so retained are open to inspection only by board members, the applicant, some person appointed by the applicant to examine them, or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(7) An applicant failing to pass his first examination, if otherwise qualified, may take subsequent examinations on payment of the fee of twenty-five dollars (\$25) for each examination.

History: En. Sec. 5, Ch. 48, L. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974.

Amendments

The 1971 amendment deleted original subsection (6), which prohibited licensing of a person who was not a United States citizen, and redesignated original subsection (7) as subsection (6). (See parent volume.)

The 1974 amendment substituted refer-

ences to the "department" for references to the "secretary-treasurer of the board of dental examiners" and "board" throughout the section; inserted "subject to section 82A-1603" near the end of subsection (4) after "department"; substituted "in a form prescribed by the board" at the end of subsection (5) for a paragraph containing the form. (see parent volume); redesignated the last paragraph of subsection (5) as subsection (6); redesignated former subsection (6) as subsection (7); and made numerous minor changes in punctuation and phraseology.

66-906. (3115.6) Certificate to be registered in counties where practicing—replacing lost certificates—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay. (1) The certificate under this act entitles the holder to practice dentistry in any county in this state, if the certificate is first filed for registration and registered in the office of the county recorder of the county in which the holder desires to practice. This act does not permit a holder of a certificate to practice in a county in this state unless the certificate has been first registered in the office of the recorder of the county. A holder of a certificate may practice in more than one (1) or in any number of counties in this state on having the certificate registered in each of the counties in which the holder desires to practice. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this act, issue a duplicate certificate, and a fee of ten dollars (\$10) shall be charged for issuing the certificate.

(2) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state; who is a graduate of an accredited four (4) year high school or has actual scholastic credits equivalent to a four (4) year high school course; who is a graduate of a recognized dental school or college; who has been lawfully and continuously engaged in the practice of dentistry for five (5) years or more immediately before filing his application to practice in this state; and who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee of fifty dollars (\$50) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state, without being required to take an examination in theory. However, no license may be issued without an examination in theory to an applicant, unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage

in the practice of dentistry to dentists licensed by this state, who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this act.

(3) A licensed dentist practicing within this state shall annually pay before March 1, to the department, as a license fee for the year, the sum of ten dollars (\$10). The board may increase or decrease the annual license fee to maintain in the earmarked fund, at all times, an amount to be known as the emergency fund to be used for the purpose of administering, policing, and enforcing this act. The emergency fund shall be maintained at an approximate level of two thousand five hundred dollars (\$2,500). Notice of the change in the amount of license fees shall be given to each dentist registered in this state by the department.

(4) If a registered dentist absents himself from the state for a period of one (1) or more years, or does not engage in active practice within this state, he may continue his license in good standing by the payment of ten dollars (\$10) each year, or at the discretion of the board, he may be reinstated on the payment of a fee of ten dollars (\$10) for each year's absence. The annual payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(5) In case of default in payment of the annual license fee by a dentist, his license shall be revoked by the board on thirty (30) days' notice given to the delinquent of the time and place of considering the revocation. A registered letter addressed to the last known address of the party failing to comply with this requirement, as the address appears on the records of the department constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the license fee plus a late payment penalty of three dollars (\$3) before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect license fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(6) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state.

History: En. Sec. 6, Ch. 48, L. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted references to the "department" for references

to the "secretary-treasurer of the board of dental examiners" and "board" throughout the section; substituted "before March 1" in subsection (3) for "on or before the first day of March"; and made minor changes in phraseology, punctuation and style.

66-908. (3115.8) Failure to register certificate as prima facie proof of lack of authority to practice dentistry. In a prosecution for a misdemeanor under this act the certificate of the county recorder of the county in which the misdemeanor is alleged to have been committed, to the effect that there has been no certificate of the department, filed and registered in the county recorder's office issued under this act to the person accused of the misdemeanor, is prima facie proof that the person is not entitled to practice dentistry in the county.

History: En. Sec. 8, Ch. 48, L. 1935; amd. Sec. 81, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board of dental examiners"; and made minor changes in phraseology, punctuation and style.

66-909. (3115.9) Compensation and expenses allowed board members—limitation on duration of examination meetings—disbursement of funds. (1) Out of the funds derived from fees collected under this act each member of the board shall be reimbursed as follows:

(a) \$25 per day for each day in actual attendance at a meeting of the board.

(b) Expenses and travel authorized under sections, 59-538, 59-539, and 59-801.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this act and for educational purposes considered wise by the board. The department, on the written request of the board, shall set aside in a separate account in the earmarked revenue fund, the emergency moneys provided under section 66-906. This account may be expended only when the board determines that an emergency exists requiring an expenditure therefrom.

History: En. Sec. 9, Ch. 48, L. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977.

Amendments

The 1974 amendment deleted a former third sentence from subsection (3) permitting the board to employ special counsel; deleted a former fourth sentence from subsection (3) relating to compensation of the secretary-treasurer of the board; substituted "department" for "secretary-treasurer of the board" in the first sentence of subsection (3) and for "state treasurer and state controller" in the second sentence of subsection (3); deleted a former last sentence from subsection (3) relating to drawing on the earmarked fund for emergency

expenses; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

The 1975 amendment inserted "59-539" in subdivision (1)(b); and deleted subdivision (1)(c) which read: "For first class railroad and Pullman fares actually incurred to and from his place of residence to the place of a meeting."

The 1977 amendment deleted "and dues" after "fees" near the beginning of the section; substituted "\$25 per day for each day in actual attendance at a meeting of the board" in subdivision (1)(a) for "Fifteen dollars (\$15) per day for each day traveling to and from a meeting and while in actual attendance at a meeting of the board and for each day actually engaged in the duties of his office"; and made minor changes in style.

66-910. (3115.10) Practice of dentistry defined—persons conducting business through licensed dentist—exceptions. (1) A person is practicing dentistry under this act if he performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid, directly or indirectly, to himself, any other person, or agency; is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed; directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other

structure to be worn in the human mouth; places the appliance or structure in the human mouth, or attempts to adjust it; advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structure; extracts or attempts to extract human teeth, or corrects, attempts, or professes to correct malpositions of teeth or of the jaw; gives, or professes to give interpretations or readings of dental roentgenograms; administers an anesthetic of any nature in connection with a dental operation; uses the words "dentist," "dental surgeon," "oral surgeon," the letters "D.D.S.," "D.M.D.," or any other words, letters, title, or descriptive matter which in any way represent him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures; states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or engages in any of the practices included in the curricula of recognized dental colleges.

(2) A dental laboratory or dental technician is not practicing dentistry under this act when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist, and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(3) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances, shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain: (a) the name and address of the person, firm, or corporation to which the work authorization is directed; (b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist; (c) the date on which the work authorization was written; (d) a description of the work to be done, including diagrams, if necessary; (e) a specification of the type and quality of the materials to be used; and (f) the signature of the dentist and the number of his license to practice dentistry. The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of two (2) years from date of issuance.

(4) This section does not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health

service, or veterans' bureau, or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists, or to a licensed dental hygienist performing an act authorized under section 66-921.

(5) No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "state board of dental examiners" in two places in subsection (3); and made minor changes in phraseology, punctuation and style.

66-911. (3115.11) Duty of county attorney to enforce act—attorney general's duty on appeal—jurisdiction of justice courts—injunction. The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this act, both on trial in the justice court where the complaint is made, and also on hearing in the district court, either on the complaint, or on information or indictment filed against a person under this act in the district court. This act does not prevent the prosecution of a person for violation of this act on the information of the county attorney directly. Justice courts have original concurrent jurisdiction of misdemeanors committed under this act. If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this act. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974.

duty to attend to the appeal of criminal cases; substituted "this chapter" for "this act" and "board" for "state board of dental examiners" in the next-to-last sentence; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment deleted a sentence relating to the state attorney general's

66-913. (3115.13) Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension. (1) A dentist may have his license revoked or suspended by the board for any of the following reasons:

(a) Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction is had is conclusive evidence.

(b) For renting, loaning, or attempting to rent or loan to a person his license for the practice of dentistry or his diploma of graduation from a dental college, school, or course to be used as a license or diploma of the person.

(c) For permitting a dental hygienist, under his personal supervision to do an act or perform an operation other than those defined and authorized under section 66-921.

(d) For permitting unlicensed auxiliary personnel to perform duties or tasks other than those which may be specifically authorized by the board.

(e) For unprofessional conduct, gross ignorance or inefficiency in his profession, habitual intemperance, or gross immorality.

(2) Unprofessional conduct consists of employing what are known as "cappers" or "steerers" to obtain business; obtaining a fee by fraud or misrepresentation; willfully betraying professional secrets; employing, directly or indirectly, a student or a suspended or unlicensed dentist to perform operations in the practice of dentistry, treat lesions of the human teeth or jaws, or correct malimposed formations; making use of advertising statements of a character tending to deceive or mislead the public; advertising prices; advertising professional superiority, or performance of professional services in a superior manner; advertising by means of a large display, glaring light sign, or other sign or device containing the representation of a tooth, teeth, bridgework, or a portion of the human head; advertising over television or radio; employing or making use of advertising solicitors or publicity press agents; advertising free dental work or free examination; advertising to guarantee dental service or to perform a dental operation painlessly; advertising by sign or printed advertisements under the name of a corporation, company, association, or trade name.

(3) Proceedings under this section may be taken by the board on its initial motion, for matters in its knowledge, or may be taken on the information of another. However, if the informant is a member of the board, the other members of the board constitute the board for the purpose of determining the truth of the charge or accusation. Accusations must be in writing, verified by some party familiar with the facts charged, and three (3) copies must be filed with the department. On receiving the accusation the board shall, if it considers the accusation sufficient, make an order setting it for hearing, and requiring the accused to appear and answer the charge or accusation at the hearing.

(4) The accused must appear at the time appointed in the order and answer the charges and make his defense unless for sufficient cause, on the accused's application or the board's order, the board assigns another day for that purpose.

(5) If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confesses the accusation

or refuses to answer the charge, or if on hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel, and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing, or proceeding in this state. The subpoena shall be issued over the signature of the secretary of the board and the seal, and in the name of this state.

(6) On revocation or suspension of a license the fact shall be noted on the records of the department and the license shall be marked canceled on the date of its revocation, or suspended, as the case may be. The department shall, on order of suspension or revocation being entered, transmit to the county recorder in which the license of the licensee affected by the judgment is registered and recorded, a copy of the order, certified by the secretary of the board, for record, and it shall be registered in the same manner and in the same book in which the registration of the certificate to practice dentistry is kept.

History: En. Sec. 13, Ch. 48, L. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "state board of dental examiners" in subsection (1) and subdivision (1)(d); substituted references to the "department"

for references to the "secretary of the board" and "board" in subsections (3) and (6); deleted a clause from the end of subsection (3) and three sentences from subsection (4) relating to service of process on the accused; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

66-914. (3115.14) Repealed.

Repeal

Section 66-914 (Sec. 14, Ch. 48, L. 1935), relating to judicial review on revocation

or suspension of a license, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-919. (3115.19) Practicing dentistry without certificate, penalty for—disposition of fines. A person who, as principal, agent, employer, employee, or assistant, practices dentistry, or who does an act of dentistry, without having first secured a certificate to practice dentistry from the department entitling him to practice in this state, is guilty of a misdemeanor, and on conviction in a district court may be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or be confined for a period not exceeding six (6) months in the county jail. Fines imposed and collected under this act shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter, shall be deposited, before January 1 of each year, in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 19, Ch. 48, L. 1935; Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, 1974.

Amendments

The 1974 amendment substituted "department" for "state board of dental examiners" in the first sentence; substituted "this chapter" for "this act" in the last

sentence; added "subject to section 82A-1603(6)" to the last sentence; and made minor changes in phraseology, punctuation and style.

66-920. (3115.20) Affiliation with national association authorized—delegate—expenses allowed. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send a delegate to the meetings of the association. The delegate shall be reimbursed as follows:

(1) Fifteen dollars (\$15) per day for each day traveling to and from a meeting and while in actual attendance at a meeting;

(2) Expenses and travel authorized under sections 59-538 and 59-801; and

(3) First-class railroad and Pullman fares actually incurred to and from his place of residence to the place of a meeting.

History: En. Sec. 20, Ch. 48, L. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of dental examiners" in the first sentence; and made minor changes in phraseology, punctuation and style.

66-921. Dental hygiene defined—dental hygienists—qualifications—examination — fee — registration — certificate form — re-examination — powers and limitations—revocation of license. (1) The department may issue to qualified applicants licenses for the practice of dental hygiene to be known as dental hygienists. The practice of dental hygiene is the doing by one person, for a direct or indirect consideration, with respect to the teeth of another person, or an act or service, educational, therapeutic, prophylactic, or preventive in nature, as the board, in writing, defines and authorizes. However, this section does not allow the board or a licensed dentist to delegate any of the following duties: (a) diagnosis, treatment planning and prescription; (b) surgical procedures on hard and soft tissues; (c) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist; (d) prescription for drugs, medications, or work authorizations.

(2) A candidate for examination as a dental hygienist shall file in his full name an application for examination with the department at least twenty (20) days before the date set by the board for the commencement of the examination and at the time of making the application shall pay the department a fee of twenty dollars (\$20). The applicant shall also furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of dental hygiene offering a course of study recognized and approved by the board.

(3) The board shall make uniform rules governing the matter of examinations for a license to practice dental hygiene in this state, which examinations are open to an applicant meeting the requirements of this act, and shall also provide in its rules for giving reasonable notice of the time and place where examinations are held.

(4) The board may recognize a certificate granted by the national board of dental hygiene examiners instead of an examination the board requires.

(5) An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee of fifteen dollars (\$15), be granted a license as a dental hygienist, and shall be registered in a record kept by the department, and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

(6) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist or in a public or private institution or under a board of health or in a public clinic authorized by the board, but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in dental hygiene without the supervision of a licensed dentist in a public or private institution or under a board of health or in a public clinic authorized by the board.

(7) An applicant failing to pass his first examination may, if otherwise qualified, take subsequent examinations on payment of the fee of twenty dollars (\$20) for each examination.

History: En. Sec. 21, Ch. 48, L. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted references to the "department" for references to the "state board of dental examiners" and the "secretary-treasurer of the board"; substituted "board" for "state board of

dental examiners" in subsections (1) and (4); deleted a paragraph relating to dental hygienists in practice prior to passage of the original act; substituted "in a form prescribed by the board" at the end of subsection (5) for a paragraph containing the wording to be used in the licensee's certificate; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

66-922. (3115.22) Annual license fee for dental hygienists—revocation of license. Before March 1 of each year a licensed dental hygienist shall pay to the department a license fee of three dollars (\$3), and in default of payment, the board may after hearing and on thirty (30) days' notice revoke the license of the hygienist in default; but the payment of the fee on or before the time of hearing, with an additional sum fixed by the board, not exceeding three dollars (\$3), excuses the default. The department may collect the fee by suit. The board may likewise revoke or suspend the license of a dental hygienist for violating this act.

History: En. Sec. 22, Ch. 48, L. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board of dental examiners" and "board"; and made minor changes in phraseology, punctuation and style.

66-923. (3115.23) Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists—reciprocity. (1) A dental hygienist:

(a) Who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state,

(b) Who has been lawfully and continuously engaged in the practice of dental hygiene for a period of one (1) year or more immediately before filing his application to practice in this state, and

(c) Who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments; may on the payment of a fee of twenty dollars (\$20) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dental hygiene in this state without being required to take an examination in theory. Except as provided in subsection (2) of this section, no license may be issued without an examination in theory to the applicant, unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state, and who have moved to the other state.

(2) A dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with this state but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state, and who deposits in person with the department, an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment may, on the payment of a fee of twenty dollars (\$20), be granted a temporary license authorizing the person to practice dental hygiene from the time of the granting of the license until the time of the next regular examination for dental hygiene set by the board. No additional fee for the examination may be charged.

(3) Except as provided in subsections (1) and (2) of this section no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(4) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene, are, in the opinion of the board, equal to those of this state.

(5) Nothing in this act relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "secretary-treasurer of the board" and "board" throughout the section; and made minor changes in phraseology, punctuation and style.

66-925. (3115.25) Repealed.

Repeal

Section 66-925 (Sec. 27, Ch. 48, L. 1935; Sec. 151, Ch. 147, L. 1963), relating to the

short title of the act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

- Section
66-1012. Practice of medicine defined—exemptions from licensing requirements.
66-1013. [Transferred.]
66-1015. Organization.
66-1017. Powers and duties of board.
66-1018. Meetings.
66-1019. Records.
66-1020. Compensation of members.
66-1021. Kinds of certificates—issuance—reciprocity certificates and certificates by endorsement—renewal.
66-1023. Practice authorized by certificate—physician's certificate.
66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement.
66-1026. Qualifications for licensure—temporary certificate.
66-1027. Qualifications for licensure—limitations.
66-1028. Approved medical school.
66-1029. Approved internship.
66-1030. Approved residency.
66-1031. License fees.
66-1032. Application for license.
66-1033. Examination.
66-1034. Issuance of license—prior practice prohibited.
66-1036. Refusal of license.
66-1037. Unprofessional conduct.
66-1038. Revocation or suspension of license—probation.
66-1041. Violations—penalties.
66-1042. Annual registration fees—limiting authority to impose registration fees.
66-1043. Disposition of money received.
66-1045. Injunctive relief—manner of charging violation of act.
66-1048. Notice of change of address or name.
66-1050. Gunshot or stab wounds to be reported.
66-1051. Immunity from liability.
66-1052. Nonliability for peer review—application to nonprofit corporations.
66-1053. Report to board of incompetence or unprofessional conduct.
66-1054. Insurer to report to board.
66-1055. Hospital to report to board.
66-1056. Immunity of persons providing information.
66-1057. Suspension of license or privilege for noncompliance.

66-1010. Repealed.

Repeal Section 66-1010 was repealed by Sec. 363, Ch. 350, Laws of Montana, 1974.
Section 66-1010 (Sec. 1, Ch. 338, L. of 1974.
1969), relating to the short title of the act,

66-1012. Practice of medicine defined—exemptions from licensing requirements. (1) Unless the context requires otherwise in this act:

(a) "Practice of medicine" means the diagnosis, treatment, or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, method, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state, under this act, and who is not exempt from the licensing requirements of this act, performs acts constituting the practice of medicine, he is practicing medicine in violation of this act.

(b) "Board" means the Montana state board of medical examiners, provided for in section 82A-1602.15.

(c) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(2) This act does not prohibit or require a license with respect to any of the following acts:

(a) The gratuitous rendering of services in cases of emergency or catastrophe;

(b) The rendering of services in this state by a physician lawfully practicing medicine in another state or territory; however, if the physician does not limit the services to an occasional case, or if he has any established or regularly used hospital connections in this state, or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state;

(c) The practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) The practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) The practice of optometry under the conditions and limitations defined by the laws of this state;

(f) The practice of osteopathy under the conditions and limitations defined in sections 66-1401.1 to 66-1413, as amended, for those doctors of osteopathy who do not receive a physician's certificate under this act;

(g) The practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) The practice of Christian Science, with or without compensation; and ritual circumcisions by rabbis;

(i) The performance by commissioned medical officers of the armed forces of the United States or of the United States public health service or of the United States veterans administration of their lawful duties in this state as officers;

(j) The rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses, or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) The rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this act;

(l) The rendering of services by a physical therapist, technician, or other paramedical specialist, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist; and

(m) The practice by persons licensed under the laws of this state to practice a limited field of the healing arts and not specifically designated, under the conditions and limitations defined by law.

(3) Licensees referred to in subsection (2) of this section, who are licensed to practice a limited field of healing arts, shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses, and may not use the title M.D., or any word or

abbreviation to indicate, or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 97 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment substituted "in sections 66-1401 to 66-1413, inclusive, of the Revised Code of Montana, 1947, as

amended or as hereafter amended, for those doctors of osteopathy who do not receive a physician's certificate under this act" at the end of subdivision (2) (f) for "by the laws of this state as now or hereafter enacted."

Chapter 97, Laws of 1974, added "or of midwife services by registered nurse-midwives under the supervision of a licensed physician" to the end of subdivision (2) (j).

Chapter 350, Laws of 1974, added definitions of "Board" and "Department" to subsection (1); substituted "sections 66-1401.1 to 66-1413" in subdivision (2) (f) for "sections 66-1401 to 66-1413"; designated the final paragraph as subsection (3); and made minor changes in phraseology, punctuation and style.

66-1013. [Transferred.]

Compiler's Notes

Section 92, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.15.

66-1014. Repealed.

Repeal

Section 66-1014 (Sec. 5, Ch. 338, L. 1969), relating to the term of office for members

of the state board of medical examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1015. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal, in which appears the words "The Board of Medical Examiners of Montana" and the further words "Official Seal" and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

History: En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of medical examiners"; substituted "elect from its members a president,

vice-president, and secretary" for "elect from among their members a president and vice-president; and appoint an executive secretary, who may be a board member or another person"; and made minor changes in phraseology and punctuation.

66-1017. Powers and duties of board. (1) The board may:

(a) Adopt rules necessary or proper to carry out this act. The rules shall be fair, impartial, and nondiscriminatory.

(b) Hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board.

(c) Aid the county attorneys of this state in the enforcement of this act and the prosecution of persons, firms, associations, or corporations charged with violations of this act.

(2) A person hired by the department to assist it and the board in investigations, the authorization of temporary certificates, professional correspondence, and related matters shall be approved by the board.

History: En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted from subdivision (1)(a) a reference to the continuing effect of rules of the board existing at time of passage of the original act; deleted from subdivision (1)(b) a clause re-

lating to the board's power to subpoena and take evidence; deleted a paragraph relating to employment of an executive secretary, legal counsel and other personnel; added subsection (2); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

66-1018. Meetings. The board shall hold meetings for examinations, and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four (4) members of the board constitute a quorum.

History: En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board"

for "board of medical examiners"; and made minor changes in phraseology, punctuation and style.

66-1019. Records. The department shall keep a record of the board's proceedings, and also records of applicants for a certificate and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment shall keep a record" for "board shall keep a record"; and made minor changes in phraseology.

66-1020. Compensation of members. Each member of the board of medical examiners shall receive twenty-five dollars (\$25) per day compensation while traveling to and from board meetings, and while attending board meetings, and for each full day away from home while conducting board business plus travel expenses, as provided for in sections 59-538, 59-539, and 59-801, while in the active and necessary discharge of his duties.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975.

Amendments

Chapter 165, Laws of 1974, substituted "compensation while traveling to and from board meetings * * * plus actual and necessary expenses" for "per diem."

Chapter 350, Laws of 1974, substituted "board" for "state board of medical examiners"; and inserted "as provided in section 59-801."

The 1975 amendment inserted "of medical examiners" after "board"; and substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary expenses and mileage as provided in section 59-801."

66-1021. Kinds of certificates—issuance—reciprocity certificates and certificates by endorsement—renewal. The department may issue two (2) forms of certificates under the board's seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed

by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

- (1) Physician's certificate, which is subject to annual registration;
- (2) Temporary certificate, which is subject to specifications and limitations imposed by the board.

History: En. Sec. 12, Ch. 338, L. 1969; the section; deleted "the executive secretary" in the second sentence after "certificate shall be signed by"; and made
amd. Sec. 98, Ch. 350, L. 1974. minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "department" for "board" at the beginning of

66-1022. Statement as to practice permitted.

Scope

Revocation of privilege to practice in hospital by its board of directors is not equivalent to revocation of license to practice

and this section does not apply. North Valley Hospital, Inc. v. Kauffman, — M —, 544 P 2d 1219.

66-1023. Practice authorized by certificate—physician's certificate. The physician's certificate, which may be issued only to citizens of the United States, authorizes the holder to perform one or more of the acts embraced in section 66-1012, R. C. M. 1947, in a manner reasonably consistent with his training, skill and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971.

Practice in Hospitals

A licensee does not have an unqualified right, constitutional or otherwise, to practice in a public hospital. North Valley Hospital v. Kauffman, — M —, 544 P 2d 1219.

Amendments

The 1971 amendment added "R. C. M. 1947" to the reference to section 66-1012.

66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

- (a) Passing an examination given and graded by the department, subject to section 82A-1603;
- (b) Certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners, or successors, by the Federation Licensing Examination Committee, or successors, or by the Medical Council of Canada or successors, if the applicant is a graduate of a Canadian medical school which has been approved by the Medical Council of Canada, or successors, certifying that the applicant has passed an examination given by this board; or
- (c) A valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate

the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country, or on a certificate issued by the National Board of Medical Examiners, or successors, by the Federation Licensing Examination Committee, or successors, or by the Medical Council of Canada, or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the Education Council for Foreign Medical Graduates, or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to section 82A-1603. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 166 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment added subsection (6) [designated subdivision (c)(vi) before the 1974 amendment]; and made a minor change in phraseology.

The 1973 amendment inserted "granted in 1955 or before" following "degree doctor of osteopathy" in subsection (6); and added the second sentence to subsection (6). [Subsection (6) was subdivision (c)(vi) prior to the 1974 amendment.]

Chapter 166, Laws of 1974, inserted in subdivision (1)(b) "or by the Medical Council of Canada, or successors, if the applicant is a graduate of a Canadian medical school which has been approved

by the Medical Council of Canada, or successors"; inserted in subsection (2) "or by the Medical Council of Canada, or successors"; and made minor changes in punctuation.

Chapter 350, Laws of 1974, rewrote the introductory clause in subsection (1) which read: "Subject to the other provisions and conditions of this act, a physician's certificate, or a certificate by reciprocity or a certificate by endorsement shall be granted by the board to an applicant therefor only upon the basis of"; substituted "department" for "board" in subdivision (1)(a) and subsection (6); added "subject to section 82A-1603" at the end of subdivision (1)(a) and at the end of the first sentence in subsection (6); and made numerous minor changes in phraseology, punctuation and style.

Denial of License by Reciprocity

Board of medical examiners acted within the scope of its authority in denying license on the basis of reciprocity to osteopath who failed to supply information necessary to enable board to review his qualifications, or to take the required examination, or to pay the application fee. *Shelton v. Board of Medical Examiners*, — M —, 534 P 2d 870.

66-1026. Qualifications for licensure—temporary certificate. The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(1) Passing an examination given and graded by the department, subject to section 82A-1603; or

(2) Certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners or successors, by the Federation Licensing Examination Committee, or successors, or by the Medical Council of Canada, or successors, if the applicant is a graduate of a Canadian medical school which has been approved by the Medical Council of Canada, or successors, certifying that the applicant has passed an examination given by the board; or

(3) A valid, unsuspended, and unrevoked license or certificate issued to the applicant, on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(4) Being a graduate of an approved medical school who has completed one (1) year of internship, or its equivalent, and being of good moral character and good conduct; and

(5) The board may require that graduates of foreign medical schools pass the examination given by the Education Council for Foreign Medical Graduates, or successors.

History: En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 166 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 166, Laws of 1974, inserted in subdivision (2) "or by the Medical Council of Canada, or successors, if the applicant is a graduate of a Canadian medical

school which has been approved by the Medical Council of Canada, or successors."

Chapter 350, Laws of 1974, rewrote the first clause of the first sentence which called for the board to grant temporary certificates; deleted "who may be either a citizen of the United States or an alien" after "applicant" in the first sentence; substituted "department" for "board" and inserted "subject to section 82A-1603" in subdivision (1); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 403, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

66-1027. Qualifications for licensure — limitations. (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

- (a) Is a citizen of the United States;
- (b) Is of good moral character, as determined by the board;
- (c) Is a graduate of an approved medical school as defined in section 66-1028;
- (d) Has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; and

(e) Has made a personal appearance before the board unless such appearance has been specifically waived by the board. The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board, or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(2) No person may be granted a temporary license to practice medicine in this state unless he:

(a) Is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(b) Is of good moral character, as determined by the board;

(c) Is a graduate of an approved medical school as defined in section 66-1028;

(d) Has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; and

(e) Has made a personal appearance before at least one (1) member of the board.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board, or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

History: En. Sec. 18, Ch. 388, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977.

Amendments

The 1971 amendment deleted former subdivisions (1)(a) and (2)(a), each of which read "is at least twenty-one (21) years of age"; redesignated former subdivisions (b) through (f), inclusive, of subsection (1) as subdivisions (a) through (e), inclusive; redesignated former subdivisions (b) through (h), inclusive, of subsection (2) as subdivisions (a) through (g), inclusive; and made minor changes in phraseology and style.

The 1974 amendment substituted "board may authorize the department to issue" for "board may grant" in the second sentence of subdivision (1)(e) and in the second sentence of subsection (3); deleted former subdivision (2)(f) [(2)(g) in the parent volume] relating to approval for temporary licensure by the executive secretary of the board; redesignated former subdivision (2)(g) as subsection (3); and made minor changes in phraseology, punctuation and style.

The 1977 amendment added "unless such appearance has been specifically waived by the board" to the first sentence of subdivision (1)(e).

66-1028. Approved medical school. An approved medical school is a school which either is accredited by the American Osteopathic Association or conforms to the minimum education standards established by the Council on Medical Education of the American Medical Association, or successors, for medical schools, or is equivalent in the sound discretion of the board. The board may, on investigation of the educational standards

and facilities, approve any medical school, including foreign medical schools.

History: En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974.

Amendments

The 1971 amendment inserted "either

(a) is accredited by the American Osteopathic Association, or (b)."

The 1974 amendment substituted "board" for "board of medical examiners of the state of Montana" in the first sentence; and made minor changes in phraseology, punctuation and style.

66-1029. Approved internship. An approved internship is an internship training program of at least one (1) year in a hospital which is either (a) approved for intern training by the American Osteopathic Association, or (b) conforms to the minimum standards for intern training established by the Council on Medical Education of the American Medical Association or successors; provided, however, that the board shall have the authority, upon investigation, to approve any other internship.

History: En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted "which is

either" and clause (a); inserted the designation for clause (b); and made minor changes in phraseology.

66-1030. Approved residency. An approved residency is a residency training program in a hospital conforming to (a) the minimum standards for residency training established by the Council on Medical Education of the American Medical Association or successors or (b) approved for residency training by the American Osteopathic Association; provided, however, that the board shall have the authority upon investigation to approve any other residency. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

History: En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971.

Amendments

The 1971 amendment inserted the designation for clause (a); and inserted "or" and clause (b).

66-1031. License fees. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee;

(2) All applicants, except applicants for temporary licenses, shall pay an initial application fee of one hundred dollars (\$100);

(3) An applicant for a temporary license shall pay an initial fee of twenty-five dollars (\$25) and twenty-five dollars (\$25) for each renewal thereof.

(4) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974.

Amendments

The 1974 amendment substituted "an examination fee as set by the board" in

the first sentence of subsection (1) for a clause setting a fee of \$100; deleted a second clause and a second sentence requiring a fee of \$100 for licenses issued on the basis of certificates from other

boards; added the second sentence of subsection (1); inserted subsection (2); and made minor changes in punctuation and style.

66-1032. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this act, apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least thirty (30) days prior to the announced date of the examination. If the applicant is not at the time of filing his application a graduate of, but is then in attendance at, an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school, and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least one (1) year of an approved internship, or its equivalent, and has otherwise met the requirements for the issuance of a license under this act.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974.

partment" for "board" throughout the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "de-

66-1033. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language, and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers may not disclose the name of an applicant but shall be identified by a number assigned by the department. The board may require the department to use the examination prepared by the National Board of Medical Examiners, or the examination prepared by the Federation Licensing Examination Committee, or successors.

(2) The board may, in its discretion, require the department to give, subject to section 82A-1603, an oral or practical examination to test the applicant's qualifications for licensure, and grant appropriate credit for this.

(3) The board may use other Montana physicians to assist in preparing the examination.

(4) A person may not be granted a license to practice medicine if he fails to attain an average grade of at least seventy-five per cent (75%). If an applicant fails to meet the minimum grade requirements in his first examination, he may, after not less than six (6) months nor more than twelve (12) months, be re-examined. He may take one (1) additional examination, but not less than one (1) year after the date of the last preceding examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination he may, within two (2) years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 167 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 167, Laws of 1974, substituted "An examination fee shall be charged for each additional examination" in subsection (4) for a clause requiring a \$50 fee for additional examinations.

Chapter 350, Laws of 1974, substituted "department" for "executive secretary of the board" in the fourth sentence of subsection (1); substituted "board may require the department to use" for "board may use" in the fifth sentence of subsection (1); substituted "board may, in its discretion, require the department to give, subject to section 82A-1603" in subsection (2) for "board may, in its discretion, give"; substituted "to assist in preparing" for "to assist in preparing and conducting" in subsection (3); deleted "without an additional fee" after "be re-examined" in the second sentence of subsection (4); deleted "without payment of another fee" before "submitting a new application" in the last sentence of subsection (4); and made minor changes in phraseology, punctuation and style.

66-1034. Issuance of license—prior practice prohibited. If the board determines that an applicant possesses the qualifications required by this act, the department shall issue a license to practice medicine which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board. Prior to the issuance of a license, the applicant may not engage in the practice of medicine in this state.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board" in the first sentence; and made minor changes in phraseology, punctuation and style.

66-1035. Repealed.

Repeal

Section 66-1035 (Sec. 26, Ch. 338, L. 1969), relating to validation of licenses

previously issued, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1036. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or

character required by this act or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing, or if after hearing, the board determines he is not entitled to a license, the board shall refuse to grant the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974.

the first sentence for "from issuing"; substituted "department" for "board" twice in the second sentence; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "from authorizing the department to issue" in

66-1037. Unprofessional conduct. As used in this act "unprofessional conduct" means:

- (1) Resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this act;
- (2) Performing abortion contrary to law;
- (3) Obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;
- (4) Willful disobedience of the rules of the board;
- (5) Conviction of an offense involving moral turpitude, or the conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;
- (6) Administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration, or successors, otherwise than in the course of legitimate or reputable professional practice;
- (7) Conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug as defined by the federal food and drug administration; and the judgment or conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;
- (8) Habitual intemperance or excessive use of narcotic drugs, alcohol, or of any other drug or substance to the extent that the use impairs the user physically or mentally;
- (9) Conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;
- (10) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing or reporting to a person, company, institution, or organization;
- (11) Testifying in court on a contingency basis;

(12) Conspiring to misrepresent or willfully misrepresenting, medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(13) Aiding or abetting, in the practice of medicine, a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(14) Gross malpractice, or negligent practice;

(15) Practicing medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 15, chapter 21, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(16) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate this act or the rules authorized by it; or

(17) Any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

History: En. Sec. 28, Ch. 338, L. 1969; for "board of medical examiners" in subamd. Sec. 107, Ch. 350, L. 1974. division (4); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "board"

66-1038. Revocation or suspension of license—probation. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, or has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses, and may include requiring the person to submit to a physical examination or a mental examination or both by a physician or physicians selected by the board, if it appears to be in the best interests of the public

that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 66-1037 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 66-1037 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 66-1037 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

- (a) revoke his license;
- (b) suspend his right to practice for a period not exceeding 1 year;
- (c) suspend its judgment of revocation on the terms and conditions to be determined by the board;
- (d) place him on probation; or
- (e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction

adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977.

Amendments

The 1974 amendment substituted references to the department for references to the board of examiners and its executive secretary and president throughout the section; deleted from the end of subsection (2) a clause relating to the information to be contained in the citation to an accused; deleted a clause at the beginning of subsection (3) relating to the hearing of evidence; and made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted subdivision (1)(d); renumbered former subdivi-

sion (1)(d) as (1)(e); and made a minor change in phraseology.

The 1977 amendment inserted "make an investigation" in the preliminary clause of subsection (1); designated the first clause of former subdivision (1)(e) as subdivision (1)(e) and redesignated the remainder of former subdivision (1)(e) as subsection (2); substituted "notice" for "citation" in the third sentence of subsection (2); redesignated former subsections (2) through (6) as subsections (3) through (7); inserted "with any of the offenses or conditions set forth in" in the first sentence of subsection (3); inserted "offenses or" in two places in subsection (4); substituted "seriously mentally ill" in the first sentence of subsection (7) for "insane"; and made minor changes in phraseology, punctuation and style.

66-1040. Repealed.

Repeal

Section 66-1040 (Sec. 31, Ch. 338, L. 1969), relating to appeals from decisions

of the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1041. Violations—penalties. (1) A person practicing medicine in this state without complying with this act, or an association or corporation (except a professional service corporation under Title 15, chapter 21) practicing medicine in this state, or a person, association, or corporation violating this act or an officer or director of an association or corporation violating this act, is guilty of a misdemeanor, and on conviction, shall be fined not less than two hundred fifty dollars (\$250) or more than one thousand dollars (\$1,000) or imprisoned in the county jail for not less than ninety (90) days or more than one (1) year, or both. Each daily failure to comply with, or each daily violation of this act, constitutes a separate offense.

(2) A person presenting, or attempting to file as his own, the diploma, license, certificate, or credentials of another, or who gives false or forged evidence to the board, a member of the board, or the department, in connection with an application for a license to practice medicine, or who practices medicine under a false or assumed name, or who falsely impersonates another licensee, is guilty of a felony, and on conviction shall be imprisoned in the state penitentiary for a term of not less than one (1) year or more than ten (10) years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974.

partment" after "member of the board" in subsection (2); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment inserted "or the de-

66-1042. Annual registration fees—limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department, an annual registration fee, not to exceed the sum of \$100, as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years, or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board in an amount not to exceed \$50, or at the discretion of the board, he may be reinstated on the payment of a fee not to exceed \$50 for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices, at least 60 days before the registration is due. In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation together with a delinquency penalty of \$10. The department may collect the dues by an action at law.

(3) No registration or license fee may be imposed on a licensee under this act by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977.

Amendments

The 1974 amendment substituted references to the department throughout the section for references to the board of examiners and its executive secretary; substituted "department of administration" in the first sentence of subsection (1) for

"budget director"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment increased the maximum annual registration fee from \$25 to \$100 and deleted the requirement that the department of administration approve the fee in the first sentence of subsection (1); changed the fees in the second sentence of subsection (1) from \$5 to an amount set by the board not to exceed \$50; and made minor changes in style.

66-1043. Disposition of money received. Money received under this act by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). In the case of a deficiency the reserves in this account in the earmarked revenue fund may be used on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted provisions detailing the procedure for making depos-

its in and withdrawals from the earmarked revenue fund; deleted a requirement for biennial reports to the governor; substituted "department of administration" for "budget director"; and made minor changes in phraseology, punctuation and style.

66-1044. Repealed.

Repeal

Section 66-1044 (Sec. 35, Ch. 338, L. 1969), relating to transfer of records, sup-

plies and money from the earlier state board of medical examiners, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1045. Injunctive relief—manner of charging violation of act. The board, notwithstanding any other provision in this act, may maintain an action to enjoin a person from engaging in the practice of medicine, until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine, not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974.

for "state board of medical examiners" in the first sentence; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "board"

66-1048. Notice of change of address or name. When a person applies for a license of any type to practice medicine in this state the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. If the person changes his address, or when the name of a licensee is changed by marriage or otherwise, the person shall within thirty (30) days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name.

History: En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974.

ences to the department throughout the section for references to the board and its executive secretary; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted refer-

66-1049. Repealed.

Repeal

Section 66-1049 (Sec. 40, Ch. 338, L. 1969), relating to service of notice or other

process, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1050. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession, treating the victim of a gunshot wound or stabbing, shall make a report to a law enforcement officer by the fastest possible means. Within twenty-four (24)

hours after initial treatment or first observation of the wound, a written report shall be submitted including the name and address of the victim, if known, and shall be sent by regular mail.

History: En. 66-1050 by Sec. 1, Ch. 303, L. 1974.

66-1051. Immunity from liability. A physician or other person reporting pursuant to section 1 [66-1050] shall be presumed to be acting in good faith and in so doing, shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303, L. 1974.

66-1052. Nonliability for peer review—application to nonprofit corporations. (1) No member of a utilization review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This act also applies to any member or nonmember of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977.

Title of Act

An act to provide nonliability for members of peer review committees, utilization review committee, and professional standards review committees; relating to certain medical professionals.

Amendments

The 1977 amendment substituted "professional utilization committee, peer review committee, or professional standards review committee of a society composed of persons licensed to practice a health

care profession is" in subsection (1) for "utilization committee of a state-wide or local society composed of doctors of medicine or doctors of osteopathic medicine and surgery or of a peer review or professional standards review committee of a state-wide or local society composed of doctors of medicine, doctors of osteopathic medicine and surgery, doctors of dentistry, chiropractors, doctors of optometry, or registered pharmacists shall be"; inserted subsection (2); redesignated former subsection (2) as subsection (3); inserted "or nonmember" in subsection (3); and made minor changes in punctuation.

66-1053. Report to board of incompetence or unprofessional conduct.

(1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society thereof shall and any other person may report to the state board of medical examiners any information such physician, organization, association, society, or person has which appears to show that a physician is:

- (a) medically incompetent;
- (b) mentally or physically unable to safely engage in the practice of medicine; or
- (c) guilty of unprofessional conduct.

(2) This section applies to professional standards review organizations only to the extent that such organizations are not prohibited from disclosing such information under federal law.

History: En. 66-1053 by Sec. 1, Ch. 172, L. 1977. concerning the competency and conduct of licensed physicians be reported to the state board of medical examiners.

Title of Act

An act requiring that information con-

66-1054. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. The report required by this section shall include the name of the insured, the name of the person making the claim, and the reason or reasons for which the claim is made.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977.

66-1055. Hospital to report to board. Each hospital or health care facility which prohibits or limits the privilege of a physician to practice medicine within that facility shall report such action to the state board of medical examiners within 30 days after the action is taken if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 66-1037 or 66-1038(1). The report shall include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977.

66-1056. Immunity of persons providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 66-1053, 66-1054, or 66-1055 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977.

66-1057. Suspension of license or privilege for noncompliance. The willful failure of any person, organization, association, society, or health care facility to comply with 66-1053, 66-1054, or 66-1055 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: En. 66-1057 by Sec. 5, Ch. 172,
L. 1977.

CHAPTER 12—NURSING—REGULATION OF PRACTICE

- | | |
|----------|---|
| Section | |
| 66-1222. | Definitions—identification of board when administering act for professional nursing and for practical nursing. |
| 66-1223. | Seal—board records public—legal counsel. |
| 66-1225. | Organization—duties and powers—separation of records responsive to functions of board—dual administrations to be exclusive of each other. |
| 66-1226. | Reimbursement for expenses—compensation. |
| 66-1227. | Qualifications of applicants for license to practice professional nursing. |
| 66-1228. | License—by examination—by endorsement without examination—license fees. |
| 66-1231. | Qualifications of applicants for licensed practical nurse. |
| 66-1232. | License of practical nurse by examination—by endorsement without examination. |
| 66-1234. | Fee. |
| 66-1236. | Renewal of license. |
| 66-1237. | Disposition of fees. |
| 66-1238. | Schools of nursing—application for approval. |
| 66-1239. | Survey and approval—secretary. |
| 66-1240. | Grounds for discipline. |
| 66-1241. | Disciplinary proceedings. |
| 66-1242. | Exemptions—limitations on authority conferred. |
| 66-1243. | Violation of chapter—penalties. |
| 66-1246. | Licensing of midwives. |

66-1222. Definitions—identification of board when administering act for professional nursing and for practical nursing. Unless the context requires otherwise, in this act:

(1) "Board" means the board of nursing, provided for in section 82A-1602.18 with dual functions in the field of professional nursing and practical nursing. In matters relating to professional nursing the board consists of five (5) members. In matters relating to practical nursing the board consists of eight (8) members. The board of five (5) members may for convenience be referred to as the board followed by the words "professional nursing administration," and the board of eight (8) members may, for convenience, be referred to as the board followed by the words "practical nursing administration."

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Practice of nursing" embraces two (2) classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of an act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health, or prevention of illness of others, or in the supervision and teaching of other personnel, or the

administration of medications and treatments prescribed by a person licensed in this state to prescribe medications and treatments; requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social science.

(b) "Practice of practical nursing" means the performance for compensation in the care of the ill, injured, or infirm, of acts selected by and performed under the direction of a registered professional nurse, or a person licensed in this state to prescribe medications and treatments; and not requiring the substantial specialized skill, judgment, and knowledge required in professional nursing.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975.

Amendments

The 1974 amendment substituted "provided for in section 82A-1602.18" in subdivision (1) for "created by this act"; substituted "board" for "Montana state

board of nursing" in subdivision (1); inserted the definition of "Department"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment deleted a sentence reading "The term does not include acts of diagnosis or prescription of therapeutic or corrective measures" at the end of subdivision (3)(a).

66-1223. Seal—board records public—legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts under each administration. The seal shall have inscribed the words "Board of Nursing"—"Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board; but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this act.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted the first two paragraphs of the section relating to creation of the state board of nursing; substituted "Board of Nursing" in subsec-

tion (1) for "Montana State Board of Nursing"; substituted "department" for "board" in subsection (2) and at the beginning of the second clause in subsection (3); inserted "and department" near the end of subsection (3); and made minor changes in phraseology, punctuation and style.

66-1224. Repealed.

Repeal

Section 66-1224 (Sec. 4, Ch. 243, L. 1953), relating to qualifications of the

members of the state board of nursing, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1225. Organization—duties and powers—separation of records responsive to functions of board—dual administrations to be exclusive of each other. (1) The board—practical nursing administration, shall meet annually in the month of July and shall elect from among the eight (8) members a president and a secretary, each of whom is a professional nurse. The board—practical nursing administration, shall hold other meetings when necessary to transact its business. The board—professional nursing administration, shall meet annually in July and shall hold other

meetings when necessary to transact its business. A majority of the board, as separately constituted for each administration, including in the majority at least one officer of the board, constitutes a quorum at any meeting; however, when sitting as the practical nursing administration, a quorum consists of a minimum of two (2) practical nurse members and three (3) professional nurse members, including one board officer. The department shall keep separate and complete minutes and records of the respective administration meetings and rules and orders promulgated by each administration of the board, and each administration shall exercise its functions, powers, and duties exclusive of the other, except for the identity and membership provided in this act.

(2) The board under each administration may make rules necessary to enable the respective administrations to administer this act. The board under each administration shall prescribe curricula and standards for schools and courses preparing persons for registration and licensure under this act. It shall provide for surveys of schools and courses at times it considers necessary. It shall approve schools and courses that meet the requirements of this act and of the board. The department shall, subject to section 82A-1603, examine, issue to, and renew licenses of qualified applicants. The board shall conduct hearings on charges calling for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this act and may incur necessary expenses for this.

(3) The board under each administration may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms, and other appropriate forms and publications convenient for the proper administration of this act, and the board may fix reasonable fees for incidental services, all within the subject matter delegated to each administration by this act. Forms shall make clear reference to the administration for which the form is intended.

(4) Unless the context requires otherwise, the powers and duties enumerated in this act shall be exercised and performed by the board—professional nursing administration, in all matters relating to professional nurses or professional nursing education, and shall be exercised and performed by the board inclusive of the practical nursing administration in all matters relating to practical nurses and practical nursing education. The officers of the board shall also be the officers of the board inclusive of the practical nursing administration.

History: En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975.

Amendments

The 1974 amendment substituted "board" for "Montana state board of nursing" throughout the section; deleted "inclusive of the" before "practical nursing administration" in the first two sentences of subsection (1); substituted "department" for "Montana state board of nursing" at the beginning of the last sentence of subsection (1); substituted "department" for "board" and inserted "subject to section

82A-1603" in the next-to-last sentence of subsection (2); deleted a sentence near the end of subsection (2) giving the board power to subpoena and compel attendance of witnesses; inserted "the department shall" before "publish forms" in the first sentence of subsection (3); deleted two paragraphs relating to the appointment and qualifications of an executive secretary; and made minor changes in phraseology, punctuation and style.

The 1975 amendment deleted a former fifth sentence in subsection (2) reading "It shall evaluate and approve courses for affiliation of student nurses."

66-1226. Reimbursement for expenses—compensation. Each member of the board shall be paid mileage as provided in section 59-801, and travel expenses provided for in sections 59-538, and 59-539, and in addition, twenty-five dollars (\$25) per day for each day actually engaged in the discharge of duties under this act, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings, and a reasonable number of days for the preparation and administration of examinations.

History: En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd. Sec. 31, Ch. 439, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 180 and once by Ch. 439. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "board" for "Montana state board of nursing"; substituted "mileage as provided in section 59-801 and actual and necessary expenses" for "hotel, travel and other necessary expenses"; and made minor changes in phraseology and punctuation.

Chapter 180, Laws of 1975, increased a board member's compensation from \$15 to \$25 per day.

Chapter 439, Laws of 1975, substituted "travel expenses provided for in sections 59-538, and 59-539" for "actual and necessary expenses"; and made a minor change in punctuation.

66-1227. Qualifications of applicants for license to practice professional nursing. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

- (1) Has successfully completed at least an approved four (4) year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;
- (2) Has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and
- (3) Meets other qualification requirements the board, acting under the professional nursing administration, prescribes.

History: En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" in the first sentence for "board, acting under the professional nursing administration"; substituted "office of the

superintendent of public instruction" in subdivision (1) for "department of public instruction"; inserted "acting under the professional nursing administration" after "board" in subdivision (3); and made minor changes in phraseology and punctuation.

66-1228. License—by examination—by endorsement without examination—license fees. (1) An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of thirty-five dollars (\$35) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date

of examination, or if the examination is not taken, subject to deduction by the department of one dollar (\$1) per subject of the examination which shall be retained by the department.

(2) The board—professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of thirty-five dollars (\$35) at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars (\$5), to be retained by the department.

(3) An applicant may, pending licensure as a professional nurse under subsection (2) of this section, practice professional nursing as an employee of a health care agency for a period not longer than three (3) months from the date the department acknowledges receiving from the nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the nurse; and an affidavit by the employer where the nurse intends to practice professional nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information deemed by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or, in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of the applicant.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 180 and once by Ch. 215. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "department" for "board" throughout the section; inserted "through the department"

after "board" in two places near the end of subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 180, Laws of 1975, deleted "or country" after "territory" near the beginning of subsection (2); substituted "health care agency" for "physician, or in a hospital or public health agency" near the beginning of subsection (3); substituted "employer" for "physician employer, or the administrator, assistant administrator, or director of nursing of a hospital or public health agency" in the second and third sentences in subsection (3); and made minor changes in phraseology and punctuation.

Chapter 215, Laws of 1975, increased the application fee specified in subsections (1) and (2) from \$25 to \$35.

66-1230. Repealed.

Repeal

Section 66-1230 (Sec. 10, Ch. 243, L. 1953), relating to nurses registered under

prior law, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1231. Qualifications of applicants for licensed practical nurse. An applicant for a license to practice as a licensed practical nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) Has successfully completed at least an approved four (4) year high school course of study, or the equivalent as determined by the office of the superintendent of public instruction;

(2) Has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom; and

(3) Meets other qualification requirements the board, acting under the practical nursing administration, prescribes.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" in the first sentence for "board,

acting under the practical nursing administration"; substituted "office of the superintendent of public instruction" in subdivision (1) for "state department of public instruction"; and made minor changes in phraseology.

66-1232. License of practical nurse by examination—by endorsement without examination. (1) An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board, acting under the practical nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination the department shall issue to the applicant a license to practice as a licensed practical nurse.

(2) The board—practical nursing administration, may issue a license to practice as a licensed practical nurse without examination to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state or territory, if in the opinion of the practical nursing administration the applicant meets the requirements for practical nurses in this state.

(3) An applicant may, pending licensure as a practical nurse under subsection (2) of this section, practice practical nursing as an employee of a health care agency for a period of not longer than three (3) months from the date the department acknowledges receiving from the practical nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the practical nurse; and an affidavit by the employer where the practical nurse intends to practice practical nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information considered by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a three (3) month period, or in any event, after being notified by the board, through the department, that the application for a license has been denied, or in all cases, after being notified by the board, through the department, to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of application.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975.

Amendments

The 1974 amendment substituted "department" in subsection (1) for "Montana state board of nursing—practical nursing administration"; substituted "board" in subsection (2) for "Montana state board of nursing"; substituted "department" in two places in subsection (3) for "board"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment deleted "or country" after "state or territory" in subsection (2); substituted "health care agency" for "physician or in a hospital or public health agency" in subsection (3); substituted "affidavit by the employer" for "affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency" in the second and third sentences in subsection (3); and made minor changes in phraseology.

66-1233. Repealed.

Repeal

Section 66-1233 (Sec. 13, Ch. 243, L. 1953; Sec. 6, Ch. 291, L. 1967), relating to waiver of certain requirements for li-

censing practical nurses before July 1, 1970, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1234. Fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee of thirty-five dollars (\$35) to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars (\$5) to be retained by the department.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975.

partment" for "board" in two places; and made minor changes in phraseology and style.

The 1975 amendment increased the application fee from \$25 to \$35.

Amendments

The 1974 amendment substituted "de-

66-1236. Renewal of license. (1) The license of a person licensed under this act must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee of ten dollars (\$10) before January 1, provided, however, that the board may increase or decrease the annual license fee so as to maintain in the earmarked revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee the department shall verify the accuracy of the application against its record, and from other sources the board considers reliable, and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31, following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(2) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the

failure to renew license and on payment of the current renewal fee prescribed by the board.

(3) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this act.

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975.

Amendments

The 1974 amendment substituted "Before December 1" for "On or before December

first" in subsection (1); substituted "department" for "board" throughout subsection (1); and made minor changes in phraseology, punctuation and style.

The 1975 amendment increased the renewal fee from \$5 to \$10; and added the proviso at the end of the third sentence of subsection (1).

66-1237. Disposition of fees. Fees and fines collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board subject to section 82A-1603(6).

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974.

Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

66-1238. Schools of nursing—application for approval. An institution desiring to conduct a school of professional or practical nursing shall apply to the department, and submit evidence that:

(1) It is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and

(2) It is prepared to meet other standards established by this law and by the board.

History: En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" in the first sentence for "board under the appropriate administration"; substituted "board" in subdivision (2) for "Montana state board of nursing"; and made a minor change in phraseology.

66-1239. Survey and approval—secretary. (1) A survey of the school and institution or institutions with which the school is to be affiliated shall be made by the department, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that an approved school of nursing is not maintaining the standards required by law and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing.

(3) Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student

nurses, and reviewing qualifications of applicants for licensure for the board shall first be approved by the board and shall be:

- (a) A citizen of the United States;
- (b) A graduate of an approved school of nursing;
- (c) A holder of at least a master's degree with postgraduate courses in nursing;
- (d) A registered professional nurse with at least five (5) years' experience in teaching or administration in an approved school of nursing.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975.

Amendments

The 1974 amendment substituted "department" in subsection (1) for "executive secretary or other authorized employee of the board"; added subsection (3); and

made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted "school and" before "institution" at the beginning of subsection (1); inserted "shall first be approved by the board" at the end of the first paragraph of subsection (3); and substituted the present subdivision (3)(c) for "A holder of at least a bachelor's degree."

66-1240. Grounds for discipline. The board, acting under the appropriate administration, may deny, revoke or suspend a license to practice nursing or discipline a licensee on proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;
- (2) Is guilty of a crime or gross immorality;
- (3) Is unfit or incompetent by reason of negligence, habit, or other causes;
- (4) Is habitually intemperate or is addicted to the use of habit-forming drugs;
- (5) Is mentally or physically incompetent;
- (6) Is guilty of unprofessional conduct;
- (7) Has willfully or repeatedly violated this act; but only after compliance with section 66-1241.

History: En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted from the end of subdivision (7) "with respect to

written, verified complaint, notice of hearing, and personal service of complaint and notice on the person charged, and public hearing before the proper board"; and made minor changes in phraseology and punctuation.

66-1241. Disciplinary proceedings. (1) On filing a sworn complaint in writing with the board, charging a person with violation of section 66-1240 as a ground for disciplinary action, the board shall fix a time and place for a public hearing before the board to be convened in membership as the five-member board for professional nurses, or as the eight-member board for practical nurses, depending on the professional or practical status of the licensee, nurse, or person against whom complaint is made.

(2) If the person charged is found guilty of the charges the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after one (1) year, in the discretion of the board.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" in subsection (1) for "executive secretary

of the board" after "shall fix a time"; deleted portions of the section relating to service of notice on an accused, procedure at the hearing, and judicial review (see parent volume); and made minor changes in phraseology, punctuation and style.

66-1242. Exemptions—limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

- (a) gratuitous nursing by friends or members of the family;
- (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) nursing assistance in the case of an emergency;
- (d) the practice of nursing by students enrolled in approved schools of nursing or approved courses or by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following their graduation;
- (e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;
- (f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;
- (g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof.

(2) This act may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts, unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977.

into numbered subsections and lettered subdivisions; inserted "or himself" near the end of subdivision (1)(e); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment divided the section

66-1243. Violation of chapter—penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

- (a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless duly licensed so to practice;

(f) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than \$100 for the first offense. Each subsequent offense is punishable by a fine of \$300, by imprisonment of not more than 6 months in the county jail or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977.

Amendments

The 1977 amendment divided the section into numbered subsections; redesignated former subdivisions (1) through (8) as subdivisions (1)(a) through (1)(h); de-

leted "as defined in this act" after "nursing" in subdivisions (c) and (d); deleted "under provisions of this act" from the end of subdivisions (c), (d), and (e); deleted "issued under the provisions of this act" after "license" in subdivision (f); and made minor changes in phraseology, punctuation and style.

66-1245. Repealed.

Repeal

Section 66-1245 (Sec. 26, Ch. 243, L. 1953), relating to co-ordination with pre-

vious board and transfer of records and funds, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1246. Licensing of midwives. (1) A person licensed under section 66-1228 who holds a certificate in nurse-midwifery from the American College of Nurse-Midwives may practice midwifery upon approval by the board-professional nursing administration of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of her certification by the American College of Nurse-Midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board-professional nursing administration may give temporary approval to practice nurse-midwifery for up to four (4) months to a person who has taken the American College of Nurse-Midwives national certification examination, pending her receipt of official notification of the results of the examination.

History: En. 66-1246 by Sec. 2, Ch. 97, L. 1974.

to license registered nurses as midwives, and amending section 66-1012, R. C. M. 1947.

Title of Act

An act authorizing the board of nurses

CHAPTER 13—OPTOMETRY—REGULATION

Section

- 66-1301. Practice of optometry defined.
- 66-1301.1. Definitions.
- 66-1301.2. Use of drugs by optometrist.
- 66-1302. Provisions regulating practice of optometry.
- 66-1303. Rules—seal.
- 66-1304. Officers of board—meetings.
- 66-1305. Examinations—admission to practice—nonresidents.
- 66-1305.1. Course required.
- 66-1307. Renewal of registration—revocation—fees.
- 66-1308. Registration of certificate in county.
- 66-1311. Compensation of board.
- 66-1312. Revocation of certificate for cause.
- 66-1314. Penalty for violations.
- 66-1316. Act not to apply to physicians, surgeons, opticians, officers of the armed forces, and certain other persons.
- 66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption.

66-1301. (3155) Practice of optometry defined. (1) The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric eye and vision examination including the employment and administration of drugs topically applied for examination purposes, limited to, cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies excluding surgery.

(2) Nothing in this section allows optometrists to treat diseases of the eye.

History: En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977.

Amendments

The 1977 amendment deleted “drugs or” before “surgery” in subsection (1)(b); substituted “which may have * * * miotics”

in subsection (1)(b) for “or the effects of any condition of the process of vision, which may have any significance in a complete optometric diagnosis”; deleted “the use of drugs or” before “surgery” at the end of subsection (1)(c); added subsection (2); and made minor changes in punctuation and style.

66-1301.1. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of optometrists, provided for in section 82A-1602.19; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974.

66-1301.2. Use of drugs by optometrist. The use of drugs by a licensed optometrist for examination purposes as stated in 66-1301 is not prohibited by Title 66, chapter 15.

History: En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977.

Title of Act

An act to include the use of drugs for diagnostic purposes within the definition of the practice of optometry and to require a course in pharmacology by optometrists for the use of diagnostic agents; amending section 66-1301, R.C.M. 1947.

66-1302. (3156) Provisions regulating practice of optometry. (1) It is unlawful for a person:

(a) To practice optometry in this state unless he has first obtained a certificate of registration, and filed it or a certified copy with the county clerk and recorder of the county of his residence;

(b) To sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) To purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) To materially alter with fraudulent intent a certificate of registration;

(e) To use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) To practice optometry under a false or assumed name;

(g) To willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) To advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) To replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions, without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist;

(j) To take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye, without having at the time a valid

certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who in the sale of spectacles, eyeglasses, or lenses uses, in the testing of the eyes, lenses other than the lenses actually sold, is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) To advertise at a price, or stated terms of a price, or as being free, the following: The examination or treatment of the eyes, furnishing of optometrical services, or furnishing a lens, lenses, contact lens, contact lenses, glasses, frames, or fitting thereof. However, this subdivision does not apply to advertising goggles, sunglasses, colored glasses, or occupational eye-protective devices, if they are not made with refractive values and are not advertised in connection with the practice of optometry or professional service.

(1) To adapt a lens to direct contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section, or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions, and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred. This chapter does not apply to physicians and surgeons authorized to practice under the laws of this state nor to a person employed in the office of and acting under the direct personal supervision of a physician or surgeon, nor to a person excepted from this chapter by section 66-1316.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1925; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted a clause from subdivision (1)(a) relating to optometrists in practice on the effective date of the original act; substituted "depart-

ment" throughout the section for "state board of optometry" and "board"; substituted "this chapter" in the last sentence of subsection (2) for "this act"; substituted "person employed in the office of and acting under the direct supervision of a physician or surgeon" in the last sentence of subsection (2) for "person acting under the supervision of a physician or surgeon"; and made minor changes in phraseology, punctuation and style.

66-1303. (3157) Rules—seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this act.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R. C. M. 1921; amd. Sec. 2, Ch. 171, L. 1925; amd.

Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted portions of the section relating to the creation of the Montana state board of examiners in op-

tometry and the qualifications and terms of office of its members; and made minor changes in phraseology, punctuation and style.

66-1304. (3158) Officers of board—meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year at Helena, or some other place designated by the president, on the fourth Monday of July, and in addition, whenever, and wherever the president and secretary call a meeting. The department shall keep a record of the proceedings of the board, which shall be open to public inspection.

History: En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R. C. M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; amd. Sec. 132, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" in the last sentence for "secretary of said board"; and made minor changes in phraseology, punctuation and style.

66-1305. (3159) Examinations—admission to practice—nonresidents. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists; and if the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he, must pass an examination given by the department, subject to section 82A-1603. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry, and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is eighteen (18) years of age, a citizen of the United States, and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering eight (8) semesters, or four (4) years, of actual attendance and which is accredited by the international association of boards of examiners in optometry. Instead of the certificates of graduation an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least six (6) years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application in the manner prescribed by the board at least four (4) weeks before the examination is held, and a fee of twenty-five dollars (\$25) shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register, which shall be kept by the department, and on the payment

of a fee of ten dollars (\$10) shall receive a certificate of registration signed by the members of the board.

(6) If an applicant for a certificate of registration has been admitted to practice optometry in another state, and has attained an average of seventy-five per cent (75%) in his examination in the other state, he may, at the discretion of the board, be granted a certificate to practice his profession in this state, without examination, on payment of all fees, if the state from which the applicant comes offers equal privileges to applicants for certificates of registration from this state.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R. C. M. 1921; amd. Sec. 4, Ch. 171, L. 1925; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974.

Amendments

The 1973 amendment reduced the minimum age specified in subsection 2 from twenty-one to eighteen years.

The 1974 amendment substituted "board" in the first sentence of subsection (1) for "board of examiners"; substituted "department" in the second sentence of subsection (1) for "board of examiners" and added "subject to section 82A-1603"; substituted "department" for "board" in the fourth sentence of subsection (1) and in subsection (5); and made minor changes in phraseology, punctuation and style.

66-1305.1. Course required. (1) In addition to the requirements of 66-1305, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometry with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(2) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1) and must pass an examination as provided in subsection (4).

(3) The course referred to in subsection (1) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(4) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

History: En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977.

66-1306. Repealed.

Repeal

Section 66-1306 (En. Ch. 138, L. 1907), relating to issuing certificates to persons

already engaged in practice, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1307. (3161) Renewal of registration—revocation—fees. A registered optometrist who desires to continue the practice of optometry in this state shall annually before July 2 of each year pay to the department a

renewal fee not to exceed the sum of fifty dollars (\$50) in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without ninety (90) days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty of thirty-five dollars (\$35).

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974.

Amendments

The 1971 amendment increased the max-

imum renewal fee specified in the first sentence from \$20 to \$50, and increased the penalty specified at the end of the section from \$25 to \$35.

The 1974 amendment substituted "department" for "secretary of said board" in the first sentence; deleted "The board may present to registered optometrists at least one annual educational program"; and made minor changes in phraseology.

66-1308. (3162) Registration of certificate in county. Recipients of the certificate of registration shall present it for record to the county clerk and recorder of the county in which they reside, and shall pay a fee of one dollar (\$1) to the county clerk and recorder for recording it. The county clerk and recorder shall record the certificate in a book to be provided by him for that purpose. A person licensed, who moves from one county to another in this state, shall, before engaging in the practice of optometry in the other county, obtain from the county clerk and recorder of the county in which the certificate of registration is recorded a certified copy of the record, or else obtain a new certificate of registration from the department and shall before commencing practice in the county, file the certificate for record with the county clerk and recorder of the county to which he moves, and pay the county clerk and recorder, for recording it, a fee of one dollar (\$1). A failure, neglect, or refusal on the part of a person holding the certificate or copy of record to file it for record, for six (6) months after issuance, forfeits it. The department is entitled to a fee of one dollar (\$1) for the reissue of a certificate and the county clerk and recorder of a county is entitled to a fee of one dollar (\$1) for making and certifying the copy of the record of a certificate.

History: En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R. C. M. 1921; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board of examiners" in the third sentence, and for "board" in the last sentence; and made minor changes in phraseology, punctuation and style.

66-1309. (3163) Repealed.

Repeal

Section 66-1309 (En. Ch. 138, L. 1907), relating to failure to apply for a certifi-

cate within six months after passage of the original act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1311. (3165) Compensation of board. Each member of the board may receive as compensation the sum of twenty-five dollars (\$25) and travel expenses, as provided for in sections 59-538, 59-539, and 59-801, for

each day actually engaged in the duties of his office. Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975.

Amendments

The 1974 amendment substituted "department" for "board" and "board" for

"board of examiners in optometry" in the last sentence; inserted "subject to section 82A-1603(6)"; deleted a third sentence relating to reports by the board; and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "necessary expenses."

66-1312. (3166) Revocation of certificate for cause. The board may revoke a certificate of registration for conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his profession, or unprofessional conduct. Unprofessional conduct includes obtaining a fee by fraud or misrepresentation; employing directly or indirectly a suspended or unlicensed optometrist to perform work covered by this act; directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist, or accepting employment to practice optometry from a company or corporation, or accepting employment to practice optometry for a company or corporation; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; or the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This act does not prohibit legitimate or truthful advertising by a registered optometrist. Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

History: En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R. C. M. 1921; amd. Sec. 6, Ch. 171, L. 1925; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974.

Amendments

The 1974 amendment rewrote the last sentence relating to notice of hearing; deleted a sentence relating to appeal of a decision of the board (for prior law, see parent volume); and made minor changes in phraseology, punctuation and style.

66-1314. (3167) Penalty for violations. A person who violates this act or the rules of the board is guilty of a misdemeanor, and on conviction shall be fined not less than two hundred dollars (\$200) and not more than five hundred dollars (\$500), or imprisoned in the county jail not exceeding six (6) months, or both fined and imprisoned. Fines collected shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R. C. M. 1921; amd. Sec. 8, Ch. 171, L. 1925; amd.

Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "state board of examiners"; added

"subject to section 82A-1603(6)"; and made minor changes in phraseology, punctuation and style.

66-1316. (3169) Act not to apply to physicians, surgeons, opticians, officers of the armed forces, and certain other persons. Nothing in this act shall be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana nor to an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist, nor to commissioned officers of the armed forces of the United States performing functions of this act in the line of their regular duty, nor to persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: En. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977.

Amendments

The 1977 amendment substituted "physician, surgeon, or optometrist" in the middle of the section for "physician or surgeon."

66-1318. Attendance at continuing educational programs prerequisite for license renewal—exemption. A licensed optometrist in active practice in this state is required to attend not less than twelve (12) hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for his license renewal. A copy of this section shall be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974.

educational programs for not less than twelve (12) hours annually.

Title of Act

An act to require each Montana licensed optometrist to attend continuing

Amendments

The 1974 amendment substituted "copy of this section" for "copy of this act" in the second sentence; and made minor changes in phraseology.

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE**Section**

66-1401. [Transferred.]

66-1401.1. Definitions.

66-1402. Duties of board and department.

66-1403. Regulation—osteopathic licenses—educational qualifications—renewal.

66-1404. Temporary certificates.

66-1405. Subjects of examination.

66-1406. Certificates not to authorize the practice of major or operative surgery.

66-1410. Compensation of board—deposit of fees.

66-1411. Graduates may be licensed without examination—practitioners from other states.

66-1413. Osteopathy not practice of medicine.

66-1401. [Transferred.]

Compiler's Notes

Section 140, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.20.

66-1401.1. Definitions. Unless the context requires otherwise, in this act: (1) "Board" means the board of osteopathic physicians, provided for in section 82A-1602.20; and,

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974.

66-1402. (3126) Duties of board and department. (1) The board shall elect a president, a secretary, and treasurer on the first Tuesday in March each year, from among its number, and shall have a seal, and its president and secretary may administer oaths.

(2) The department shall, subject to section 82A-1603, hold examinations at the state capitol on the first Tuesday in March and September of each year.

(3) The board shall hold meetings as necessary, each session not to exceed three (3) days.

(4) The department shall issue a certificate of qualification to applicants having a diploma from a legally recognized and regularly conducted school of osteopathy at the time it was issued, or who pass required examinations under section 66-1404. The certificate shall be signed by the president and secretary of the board, and attested by its seal, and is conclusive of the right of the lawful holder to practice osteopathy in this state.

(5) The department shall keep a record of the board's proceedings; a register of applicants for a license, including his name, age, and time spent in the study and practice of osteopathy, and the name and location of the college of osteopathic medicine from which the applicant holds a diploma; and a register of the names of applicants licensed and rejected under this act. These books are prima facie evidence of matters recorded.

History: En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R. C. M. 1921; amd. Sec. 142, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of osteopathic examiners" in subsection (1); substituted subsections (2)

and (3) for "Said board shall hold meetings for the examinations at the state capitol on the first Tuesday in March and September of each year, and such other meetings as may be deemed necessary, each session thereof not to exceed three days"; substituted "department" for "board" in subsections (4) and (5); and made minor changes in phraseology, punctuation and style.

66-1403. (3127) Regulation—osteopathic licenses—educational qualifications—renewal. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements: four (4) years of high school or its scholastic equivalent; at least two (2) years preprofessional college education in an accredited college or university; and four (4) years professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board.

Application shall be made on forms prescribed by the board and furnished by the department. An applicant who fails the examination is entitled to a second examination without charge.

(2) A person holding a certificate to practice under this act and who is in active practice in this state, shall before April 1 of each year pay a renewal fee of fifteen dollars (\$15) to the department; and a person holding a certificate to practice under this act, who is not in active practice, shall before April 1 of each year pay a renewal fee of seven dollars and fifty cents (\$7.50) to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this act and from whom a fee is due stating that the fee is due.

(3) The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of fifty dollars (\$50) if the lapsed fees exceed that amount.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1925; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to department throughout the section for references to the board of osteopathic examiners and its secretary; substituted "forms prescribed by the board and furnished by the department" in subsection (1) for "forms furnished by the board"; substituted "before April 1" in subsection (2) for "on or before the first day of April"; and made minor changes in phraseology, punctuation and style.

66-1404. (3128) Temporary certificates. The secretary of the board may authorize the department, upon examination, to issue a certificate to an applicant to practice osteopathy until the next meeting of the board when he shall report the facts, at which time the temporary certificate expires, but the temporary certificate may not be issued after the board has once rejected the applicant.

History: En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R. C. M. 1921; amd. Sec. 144, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of osteopathic examiners"; substituted "may authorize the department, upon examination, to issue" for "may upon examination, grant"; and made minor changes in phraseology.

66-1405. (3129) Subjects of examination. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy, and other subjects taught in well regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in section 66-1403, a legally authorized and

regularly conducted school of osteopathy, recognized by the board, except as otherwise provided in section 66-1402.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to section 82A-1603. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to applicants who pass the examination to practice osteopathy in this state, which license shall be granted by not less than two (2) members of the board, attested by the board's seal. The fee for the examination and license is twenty dollars (\$20).

History: En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R. C. M. 1921; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted references to department throughout the section for references to the board or its members; inserted "subject to section 82A-1603" in subsection (2); and made minor changes in phraseology, punctuation and style.

66-1406. (3130) Certificates not to authorize the practice of major or operative surgery. The certificates provided for in this chapter do not authorize the holders thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. A person holding a certificate under this chapter who prescribes or uses drugs in the practice of osteopathy or who performs major or operative surgery is guilty of a misdemeanor, provided that nothing in this chapter may be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the Montana state board of medical examiners.

History: En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; amd. Sec. 6, Ch. 101, L. 1977.

Amendments

The 1977 amendment substituted "this

chapter" in the first sentence for "the preceding section"; substituted "chapter" for "act" twice in the last sentence; and made minor changes in phraseology, punctuation and style.

66-1410. (3134) Compensation of board—deposit of fees. (1) Each of the members of the board may receive as compensation a sum not to exceed twenty dollars (\$20) for each day actually engaged in the duties of their office, together with travel expenses, as provided for in sections 59-538, 59-539, and 59-801, connected with attending the meetings of the board.

(2) The fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

History: En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R. C. M. 1921; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975.

Amendments

The 1974 amendment substituted "department" for "board" in subsection (2); substituted "board" for "state board of osteopathic examiners" and added "subject to section 82A-1603(6)" to subsection (2); and made minor changes in phraseology and style.

The 1975 amendment substituted "travel and necessary expenses" in subsection (1); expenses, as provided for in sections 59-538, 59-539, and 59-801" for "legitimate and made minor changes in phraseology.

66-1411. (3135) Graduates may be licensed without examination—practitioners from other states. A graduate of a reputable school of osteopathy, who has been strictly examined and licensed to practice osteopathy in another state, may be licensed to practice osteopathy in this state on production to the board of his diploma, and the license obtained in the other state, and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may have the applicant examined as to his qualifications.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R. C. M. 1921; amd. Sec. 147, Ch. 350, L. 1974.

Amendments

The 1974 amendment made minor changes in phraseology, punctuation and style.

66-1413. (3137) Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of 66-1011 through 66-1048 and is not subject to the provisions of those sections.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; amd. Sec. 7, Ch. 101, L. 1977.

Amendments

The 1977 amendment substituted "66-1011 through 66-1048" for "sections 66-1001 to 66-1009"; and made minor changes in phraseology and punctuation.

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

Section

- 66-1501. Sale of drugs, medicines, etc., unlawful except as provided herein.
- 66-1502. Definitions.
- 66-1503. [Transferred.]
- 66-1504. Powers of board and department.
- 66-1505. Salaries and expenses of board members.
- 66-1506. Examination of applicants for registration—fees—certificates.
- 66-1507. Annual renewal of registration fees.
- 66-1507.1. Continuing education required.
- 66-1507.2. Continuing education rules.
- 66-1508. Store license—certified pharmacy license—suspension or revocation.
- 66-1511. Poison register to be kept by pharmacists may be required by board.
- 66-1512. Revocation of license for failure to keep record or falsifying.
- 66-1516. Physicians to report prescriptions issued to drug addicts.
- 66-1521. Attorney general to be attorney for board—prosecutions—duties of county attorneys.
- 66-1521.1. Qualifications of employee hired by department.
- 66-1522. Use of words "apothecary", "pharmacy", "chemist shops" for advertising.
- 66-1523. Drug substitution.
- 66-1525. Exemptions.
- 66-1527. Disposition of fees and fines.
- 66-1528. Short title.
- 66-1529. Definitions.
- 66-1530. Product selection permitted.
- 66-1531. Notice to purchaser.
- 66-1532. Savings passed on.
- 66-1533. Product selection not practice of medicine.
- 66-1534. When product selection evidence of negligence.
- 66-1535. Rule making authorized.
- 66-1536. Penalties.

66-1501. (3170) Sale of drugs, medicines, etc., unlawful except as provided herein. (a) It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons in any place other than a pharmacy, except as hereinafter provided.

(b) It shall be unlawful for any proprietor, owner or manager of a pharmacy, or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern in the temporary absence of such pharmacist.

(c) It shall be unlawful for any person falsely to assume or pretend to the title of pharmacist or intern, unless such person has a license as such issued and in force pursuant to the terms of this act.

(d) It shall be unlawful for any person other than a licensed and registered pharmacist, or a licensed and registered intern to compound, dispense, vend or sell at retail, drugs, medicines, chemicals or poisons, except as in this act provided.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" throughout the section and made a minor change in phraseology.

66-1502. (3170.1) Definitions. Unless the context requires otherwise, in this act:

(1) "Pharmacy" means a drugstore or other established place registered by the department of professional and occupational licensing, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail.

(2) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons, and who may affix to his name the term REG-PH.

(3) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons in a pharmacy having a pharmacist in charge.

(4) "Drug" means (a) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or a supplement to them; (b) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) articles (other than food) intended to affect the structure or function of the body of man or other animals; and (d) articles intended for use as a component of an article specified in subsection (a), (b) or (c); but does not include devices or their components, parts, or accessories.

(5) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases, or which is used for this purpose.

(6) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(7) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(8) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(9) "Person" includes an individual, copartnership, corporation, or association.

(10) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(11) "Wholesale" means a sale for the purpose of resale.

(12) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(13) "Prescription" means an order given individually for the person for whom prescribed directly from the prescriber to the furnisher or indirectly to the furnisher by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974.

Compiler's Notes

Section 1, Ch. 439, Laws of 1977, effective July 1, 1979, amends this section by adding a subdivision (14) reading "(14) 'Continuing education' means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state."

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsection (c) (now subdivision (3)).

The 1974 amendment substituted "department of professional and occupational licensing" and "department" throughout the section for "state board of pharmacy"; rewrote the definition of "Board" which read: "The term 'board' or 'state board of pharmacy' shall mean the Montana state board of pharmacy"; deleted a definition of "secretary"; inserted the definition of "Department"; deleted a statement that masculine words include the feminine and neuter, and that singular includes plural; and made minor changes in phraseology, punctuation and style.

66-1503. [Transferred.]

Compiler's Notes

Section 149, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.21.

66-1504. (3174) Powers of board and department. (1) The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) Regulate the practice of pharmacy in this state subject to this act;

(b) Determine the minimum equipment necessary in and for a pharmacy and drugstore;

(c) Regulate under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) Regulate the quality of drugs and medicines dispensed in this state, using the United States pharmacopoeia and the national formulary, or revisions thereof, as the standards;

(e) Request the department to enter and inspect at reasonable times places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) Regulate the practice of interns under national standards;

(g) Revoke temporarily or permanently, licenses issued by the department to a pharmacist or intern whenever the holder of the license has obtained it by false representations or fraud, is an habitual drunkard or addicted to the use of narcotic drugs, has been convicted of a felony, has been convicted of violating the pharmacy law, or has been found guilty by the board, of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant.

(h) Make rules for the conduct of its business.

(i) Perform other duties and exercise other powers as this act requires.

(j) Adopt and authorize the department to publish rules for carrying out and enforcing this act.

(3) The department shall license, register, and examine, subject to section 82A-1603, applicants whom the board considers qualified under this act; license pharmacies and certain stores under this act; and issue certificates of "certified pharmacy" under this act.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R. C. M. 1921; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974.

Amendments

The 1971 amendment inserted the second sentence of subdivision (b)(6) (now subdivision (2)(f)); and substituted "intern" for "assistant pharmacist" in subdivision (b)(7) (now subdivision (2)(g)).

The 1974 amendment substituted references to department throughout the section for references to the board or its representatives; deleted "a treasurer" from sub-

section (1); substituted "and secretary" in subsection (1) for "and a pharmacist, who may or may not be a member, as secretary"; inserted "Request the department" before "to enter" in subdivision (2)(e); deleted two sentences from subdivision (2)(f) relating to licensing pharmacists and pharmacies; deleted "subject to the right of any person whose license may be revoked to review by the district court of the proper county on any question of law and fact" from the end of subdivision (2)(g); deleted a subdivision relating to reporting as provided in section 82-4002; deleted "To employ necessary assistants" from subdivision (2)(h); added subdivision (3); and made minor changes in phraseology, punctuation and style.

66-1504.1. Repealed.

Repeal

Section 66-1504.1 (Sec. 12, Ch. 314, L. 1969), relating to the placement of drugs

under the Dangerous Drug Act, was repealed by Sec. 31, Ch. 412, Laws 1973.

66-1505. (3175) Salaries and expenses of board members. Each member of the board shall receive twenty-five dollars (\$25) a day as compensa-

tion for the performance of his services as a board member and shall be compensated in addition thereto for travel expenses, as provided for in sections 59-538, 59-539, and 59-801, in attending meetings.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R. C. M. 1921; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975.

Amendments

Chapter 72, Laws of 1974, increased the per diem of members from \$15 to \$25; provided compensation for actual and necessary expenses while attending meetings;

and added a second sentence which read "Mileage expenses of board members will be paid pursuant to section 59-801."

Chapter 350, Laws of 1974, deleted a sentence relating to compensation of the secretary of the board.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary expenses"; deleted the sentence added by Chapter 72, Laws of 1974; and made minor changes in phraseology and style.

66-1506. (3176) Examination of applicants for registration—fees—

certificates. (1) The board shall meet at least once a year to transact its business. The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined together with the grounds on which the right of each to examination was claimed and also the names of persons registered by examination or otherwise. The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(2) On again making payment of the fee an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) The fee for registration by reciprocity is \$200.

(4) To be entitled to examination as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy, but the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board. During this period, if the applicant has passed the examination, he shall be licensed as an intern only.

(5) The board may, in its discretion, authorize the department to grant registration without examination, to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this act. Every person licensed and registered under this act shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business. If the holder is entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R. C. M. 1921; amd. Sec. 6, Ch. 175, L. 1939;

amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977.

Amendments

Chapter 168, Laws of 1971, deleted "at least twenty-one (21) years of age" from the first sentence in subsection (4); and made minor changes in phraseology and style.

Chapter 241, Laws of 1971, substituted "intern" for "assistant pharmacist" throughout the section; increased the examination fee from \$15 to \$25; inserted "registered pharmacist's" before "license" near the end of the first sentence of subsection (4); and substituted "complied with the internship requirements established by the state" for "at least one (1) year of practical experience in a pharmacy which has been approved by the" at the end of the first sentence of subsection (4).

Chapter 71, Laws of 1974, in subsection (3), increased the reciprocity registration fee from \$50 to \$100.

Chapter 350, Laws of 1974, deleted "to examine applicants for registration as pharmacists and interns" from the first sentence in subsection (1); inserted "The department" before "shall give reasonable notice" in the second sentence of subsection (1); substituted "department" for "secretary" in the third sentence of subsection (1); inserted "authorize the department to" before "grant registration" in the first sentence of subsection (5); substituted "department" for "state board of pharmacy" in the second sentence of subsection (5); deleted a final paragraph relating to pharmacists and interns holding certificates on the effective date of the original act; and made minor changes in phraseology, punctuation and style.

The 1977 amendment changed the examination fee from \$25 to an amount set by the board at a figure commensurate with costs in the last sentence of subsection (1); increased the fee for registration by reciprocity from \$100 to \$200 in subsection (3); and made minor changes in punctuation and style.

66-1507. (3177) Annual renewal of registration fees. A person licensed and registered by the department shall annually pay to the department before June 30, a renewal of registration fee of fifteen dollars (\$15). A default in the payment of a renewal fee for a period of thirty (30) days after the date it is due increases the renewal fee to thirty dollars (\$30). It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. A certificate and renewal expires at the time prescribed, not later than one (1) year from its date. A defaulter in a renewal fee may be reinstated within one (1) year of the default without examination on payment of the arrears.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R. C. M. 1921; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974.

Compiler's Notes

Section 2, Ch. 439, Laws 1977, effective July 1, 1979, amends this section to read "(1) A person licensed and registered by the department shall annually pay to the department before June 30, a renewal of registration fee of \$15. A default in the payment of a renewal fee for a period of 30 days after the date it is due increases the renewal fee to \$30. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. The practice of pharmacy is a pro-

fessional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

"(2) The board may charge an additional fee of up to \$10 for each license renewal to be used in administering the continuing education provisions of this chapter."

Amendments

The 1971 amendment, inserted "on or before the 30th day of June" in the first sentence; increased the renewal fee from

\$5 to \$15; inserted the second sentence; and added the last sentence.

The 1974 amendment substituted "department" for "board" in the first sentence; substituted "before June 30" in

the first sentence for "on or before the 30th day of June"; and made minor changes in phraseology, punctuation and style.

66-1507.1. Continuing education required. (1) After July 1, 1979, no pharmacist's license may be renewed unless the pharmacist has certified, upon a form prescribed by the board, that he has obtained the number of hours of approved continuing education required by the board.

(2) Upon adequate demonstration of good cause for having failed to obtain the required number of continuing education hours through attendance of regularly accredited programs, the board shall renew the license of a pharmacist who has completed an alternative program of compliance prescribed by the board. Alternative programs shall insure competency essentially equivalent to that gained through regularly accredited continuing education programs and may include home study courses, examinations, or any other program prescribed by the board.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977.

tional fee for license renewal; amending sections 66-1502 and 66-1507, R.C.M. 1947; and providing a delayed effective date.

Title of Act

An act requiring continuing education for licensed pharmacists and allowing the board of pharmacists to charge an addi-

Effective Date

Section 5 of Ch. 439, Laws 1977 read "This act is effective on July 1, 1979."

66-1507.2. Continuing education rules. The board shall adopt rules for the proper administration of the continuing education provisions of this chapter including but not limited to:

- (1) determinations as to accredited programs;
- (2) the number of hours of continuing education required for license renewal; and
- (3) alternative methods for fulfilling continuing education requirements as prescribed in 66-1507.1(2).

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977.

Effective Date

Section 5 of Ch. 439, Laws 1977 read "This act is effective on July 1, 1979."

66-1508. Store license—certified pharmacy license—suspension or revocation. (1) The department shall on application on forms prescribed by the board and on the payment of an annual fee of \$10, license stores other than a pharmacy in which are sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state in which the manufacturer resides. The name and address of the manufacturer shall appear conspicuously on each package sold by the licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs, without first having secured a license and thereafter keeping it in force by proper renewal. This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled, nor nonmedical articles usually sold by vendors.

(2) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee of \$100, the department shall issue a license to a pharmacy as a "CERTIFIED PHARMACY", however, the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this act. The annual renewal fee for a pharmacy shall be set by the board in an amount not to exceed \$50. Any default in the payment of such renewal fee for a period of 30 days after the date the same is due shall increase the renewal fee to the sum of \$100. The license must be displayed in a conspicuous place in the pharmacy for which it is issued, and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word pharmacy to identify his business, or use the word pharmacy in advertising unless a license has been issued and is in effect.

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license obtained by false representation or fraud; when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge; when the person to whom the license is granted has been convicted of a violation of this act, a felony, or a violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059) if a natural person, whose pharmacist or intern license has been revoked; or when the store or pharmacy is conducted in violation of this act. Before a license can be revoked the holder is entitled to a hearing by the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in subsections (2) and (3); and made a minor change in style.

Chapter 308, Laws of 1974, inserted the third sentence in subsection (2) relating to a late renewal fee.

Chapter 350, Laws of 1974, substituted "department" for "state board of pharmacy" in the first sentence of subsection (1) and for "board" in the second sen-

tence of subsection (2); substituted "board" for "state board of pharmacy" and inserted "by the department" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

The 1977 amendment increased the annual fee in the first sentence of subsection (1) from \$5 to \$10; substituted "original certification and annual renewal" in the first sentence of subsection (2) for "annual registration and licensing"; substituted "original certification fee of \$100" in the second sentence of subsection (2) for "annual fee of \$20"; inserted the third sentence of subsection (2); increased the renewal fee in the fourth sentence of subsection (2) from \$40 to \$100; and made minor changes in punctuation and style.

66-1509. Repealed.

Repeal

Section 66-1509 (Sec. 9, Ch. 175, L. 1939; Sec. 7, Ch. 241, L. 1971), relating to judi-

cial review of acts of the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1510. (3185) Repealed.

Repeal

Section 66-1510 (Sec. 1, Ch. 156, L.

1907), relating to sale of poisons, was repealed by Sec. 36, Ch. 101, Laws 1977.

66-1511. (3185.1) Poison register to be kept by pharmacists may be required by board. The board may by a rule require registered pharmacists to keep a poison register which may require a record of poisons sold or disposed of, the signature of the purchaser, and other information required by the board. The board may provide by rule what are poisons.

History: En. Sec. 1, Ch. 11, L. 1935; for "Montana state board of pharmacy" amd. Sec. 155, Ch. 350, L. 1974. in the first sentence; and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "board"

66-1512. (3185.2) Revocation of license for failure to keep record or falsifying. If a pharmacist sells or disposes of poison without keeping a record of it, keeps a false record of it, permits the sale or disposal of it without keeping a record, or otherwise violates rules made by the board the board may revoke the license of the pharmacist.

History: En. Sec. 2, Ch. 11, L. 1935; for "Montana state board of pharmacy"; amd. Sec. 156, Ch. 350, L. 1974. and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "board"

66-1516. (3194) Physicians to report prescriptions issued to drug addicts. (1) A physician duly licensed to practice medicine in Montana who prescribes for or dispenses, administers, or in any manner gives opium or coca leaves or any of their derivatives, salts, preparations, or compounds to a person known to him or believed by him to be an habitual user or a drug addict shall, within 48 hours, report the name, address, physical and mental condition, and any necessary substantial information regarding such person to the county attorney of the county in which that physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this section. "An habitual user of drugs" or "drug addict" is defined as follows: A person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular intervals for 30 consecutive days prior to the day that person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives. If a physician prescribes for or dispenses, administers, or in any manner gives any of the drugs mentioned in this section daily for more than 30 days to a person, that physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing to prescribe for, dispense, administer, or give such drugs to such person, and the prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such person. The county attorney shall, upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

(2) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sen-

tenced to a term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed \$500, or both.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; amd. Sec. 8, Ch. 101, L. 1977.

Amendments

The 1977 amendment designated the former section as subsection (1); substituted "opium or coca leaves or any of their derivatives, salts, preparations, or compounds" near the beginning of sub-

section (1) for "any of the drugs mentioned in this act"; deleted "or to a physician of any institution" after "applies to a physician" near the middle of the second sentence of subsection (1); substituted references to section for references to act throughout subsection (1); added subsection (2); and made minor changes in phraseology, punctuation and style.

66-1517 to 66-1519. (3195 to 3197) Repealed.

Repeal

Sections 66-1517 to 66-1519 (Secs. 7 to 9, Ch. 202, L. 1921), relating to arrest and

commitment of drug addicts, were repealed by Sec. 36, Ch. 101, Laws 1977.

66-1521. (3202.10) Attorney general to be attorney for board—prosecutions—duties of county attorneys. The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of this act. The county attorney of a county in which an offense under this act is committed shall prosecute the offender. The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under this act.

History: En. Sec. 4, Ch. 104, L. 1931; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974.

Amendments

The 1971 amendment substituted "intern" for "assistant pharmacist" in the last sentence.

The 1974 amendment substituted "board" in the first sentence for "Montana state board of pharmacy"; deleted "but said board may in its discretion employ other counsel" from the first sentence; substituted "department" for "secretary of the board" and "secretary" in the second and fourth sentences; and made minor changes in phraseology, punctuation and style.

66-1521.1. Qualifications of employee hired by department. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

- (1) A citizen of the United States and a resident of this state; and
- (2) A pharmacist registered under this chapter with five (5) years of practical experience.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974.

66-1522. Use of words "apothecary", "pharmacy", "chemist shops" for advertising. (1) It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any abbrevia-

tion, translation, extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this chapter and duly licensed as such and in the charge of a registered pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; "drug store", and "medicine" as words prohibited to be in a retail name; substituted "chapter" for "act" near the end of the section; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment deleted "drugs",

66-1523. Drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in the Montana Drug Product Selection Act.

History: En. 66-1523 by Sec. 10, Ch. 403, L. 1977.

Compiler's Notes

This section was repealed by Chapter 101, Laws 1977. It was also amended by Chapter 403, 1977 (Montana Drug Product Selection Act) to add a subsection which

is an integral part of that chapter. Since this new subsection can easily stand alone and since the intent of Chapter 101, Laws 1977 was clearly not to repeal the new subsection which was simultaneously enacted, the new subsection is codified as valid law while all of old 66-1523 is omitted as effectively repealed.

66-1524. Repealed.

Repeal

Section 66-1524 (Sec. 13, Ch. 175, L. 1939), relating to adulteration of drugs,

were repealed by Sec. 36, Ch. 101, Laws 1977.

66-1525. Exemptions. Subject only to 66-1514 and 66-1515: (1) nothing in this chapter subjects a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents such person from compounding or using drugs, medicines, chemicals, or poisons in his practice or prevents one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals, or poisons as he considers proper in the treatment of such patient;

(2) nothing herein prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing herein prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing herein applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes.

History: En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977.

Amendments

The 1977 amendment inserted the pre-

liminary clause before subdivision (1); redesignated former subsections (a) through (d) as subdivisions (1) through (4); inserted "may" near the beginning of subdivision (4); and made minor changes in phraseology and punctuation.

66-1527. (3202.12) Disposition of fees and fines. Fines paid under this act and fees collected by the department for registration and licenses issued under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 6, Ch. 104, L. 1931; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "by the department" for "by or under the authority of the state board of pharmacy"; added "subject to section 82A-1603(6)"; and made minor changes in phraseology.

66-1528. Short title. This act may be cited as the "Montana Drug Product Selection Act".

History: En. 66-1528 by Sec. 1, Ch. 403, L. 1977.

Product Selection Act, allowing for product selection of certain prescribed drugs; amending sections 27-703 and 66-1523, R.C.M. 1947.

Title of Act

An act to be called the Montana Drug

66-1529. Definitions. As used in 66-1528 through 66-1536 the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) Person means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(7) "Generic name" means the chemical or established name of a drug product or drug ingredients published in the latest edition of the official United States Pharmacopoeia or official Homeopathic Pharmacopoeia of the United States.

(8) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia and the National Formulary.

(9) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977.

66-1530. Product selection permitted. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977.

66-1531. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 66-1530 shall notify the person presenting the prescription, that he may refuse the product selection as provided in 66-1530.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating, "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: En. 66-1531 by Sec. 4, Ch. 403, L. 1977.

66-1532. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977.

66-1533. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of 66-1528 through 66-1536 does not constitute the practice of medicine.

History: En. 66-1533 by Sec. 6, Ch. 403, L. 1977.

66-1534. When product selection evidence of negligence. (1) A pharmacist making a product selection under the provisions of 66-1528 through 66-1536 assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: En. 66-1534 by Sec. 7, Ch. 403, L. 1977.

66-1535. Rule making authorized. The board of pharmacists may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of 66-1528 through 66-1536 in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977.

66-1536. Penalties. (1) In addition to all other penalties provided by law, a person who violates the provisions of 66-1530, 66-1531, or 66-1532 or any rule promulgated as provided in 66-1535 shall be fined no more than \$250 for each violation.

(2) The penalty imposed under 66-1528 through 66-1536 may be remitted or mitigated upon such terms and conditions as the board of pharmacists considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under 66-1528 through 66-1536 becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacists. The notice shall be sent by registered or certified mail and must include:

- (a) reference to the particular sections of the statute or rule;
- (b) a short and plain statement of the matters asserted as charged;
- (c) a statement of the amount of the penalty or penalties imposed; and
- (d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacists.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977.

Separability Clause

Section 12 of Ch. 403, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 16—PAWNBROKERS AND JUNK DEALERS—REGULATIONS

Section

- 66-1601. Interest pawnbrokers may receive.
 66-1602. Search warrant may issue.
 66-1607. Violation as misdemeanor.

66-1601. (4186) Interest pawnbrokers may receive. No person may carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or his employees or agents may not charge more than 3% a month for interest, commission, discount, storage, and caring for property pledged.

History: This section first enacted in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3310, Pol. C. 1895; appeared as Sec. 2105, Rev. C. 1907; re-en. Sec. 4186, R.C.M. 1921; amd. Sec. 12, Ch. 185, L. 1977.

Amendments

The 1977 amendment substituted "may" for "must" in "No person may carry on" at the beginning of the section and made minor changes in phraseology, punctuation and style.

66-1602. (4187) Search warrant may issue. Whenever any person makes oath before a magistrate that any property belonging to him has been taken by theft or otherwise without his consent, and that he has reason to believe or suspect and does suspect that such property has been pledged with any pawnbroker or junk dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken and, if found, to seize and bring the same before him.

History: First enacted in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3311, Pol. C. 1895; re-en. as Sec. 2106, Rev. C. 1907; re-en. Sec. 4187, R.C.M. 1921; amd. Sec. 54, Ch. 359, L. 1977.

Amendments

The 1977 amendment substituted "taken by theft or otherwise" for "embezzled or taken"; and made minor changes in punctuation.

66-1607. (4192) Violation as misdemeanor. A violation of any of the provisions of this chapter is a misdemeanor.

History: En. in substance as one of Secs. 1 to 8, pp. 206-207, L. 1889; amd. Sec. 3316, Pol. C. 1895; re-en. Sec. 2111, Rev. C. 1907; re-en. Sec. 4192, R. C. M. 1921; amd. Sec. 21, Ch. 513, L. 1973; amd. Sec. 13, Ch. 185, L. 1977.

be a misdemeanor" for "are provided for in sections 94-3701 to 94-3704" at the end of the section.

The 1977 amendment deleted "The penalties for" at the beginning of the section; and made a minor change in phraseology.

Amendments

The 1973 amendment substituted "shall

CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

Section

- 66-1807.1. Definitions.
 66-1813. [Transferred.]
 66-1815. Powers and duties of department and board.
 66-1816. Disposition of funds.
 66-1817. Rule-making powers of the board.
 66-1818. Examinations.
 66-1819. Certificates of certified public accountants.
 66-1820. License of public accountants.
 66-1821. Further requirements for licensure of public accountants.
 66-1825. Applicability of education and experience requirements.
 66-1826. Powers of board.

- 66-1829. Partnership composed of certified public accountants—registration thereof.
- 66-1829.1. Corporations composed of certified public accountants—registration.
- 66-1830. Temporary certificate and temporary license.
- 66-1831. Partnerships composed of public accountants—registration thereof.
- 66-1831.1. Corporations composed of public accountants—registration thereof.
- 66-1832. Registration of offices.
- 66-1833. Annual licenses to practice.
- 66-1835. Revocation or suspension of partnership or corporation registration.
- 66-1836. Hearings before board.
- 66-1837. Reinstatement.
- 66-1838. Acts declared unlawful.

66-1807.1. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of public accountants, provided for in section 82A-1602.2; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974.

66-1813. [Transferred.]

Compiler's Notes

Section 161, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.2.

66-1814. Repealed.

Repeal

Section 66-1814 (Sec. 2, Ch. 118, L. 1969), relating to qualifications of members of the state board of public accountancy, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1815. Powers and duties of department and board. (1) The board shall elect annually a chairman, secretary, and treasurer from its members. (2) The board may adopt rules for the conduct of its affairs and the administration of this act. (3) A quorum for the transaction of business consists of three (3) members of the board. (4) The board shall have a seal which shall be judicially noticed. (5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this act, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records. (6) Each member of the board shall receive as compensation twenty dollars (\$20) for each day actually engaged in the duties of his office, and, in addition, shall be reimbursed for travel expenses, provided for in sections 59-538, 59-539, and 59-801, connected with the discharge of his official duties.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975.

Amendments

The 1974 amendment deleted from the first sentence "and all or any two (2) of such officers may sign and approve claims filed against the board of accountancy for payment of all expenses incurred under this act"; substituted "department" for

"board" in subsection (5); deleted a sentence authorizing the board to employ necessary personnel; and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "travel expenses, provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary expenses" near the end of the section; and made a minor change in phraseology.

66-1816. Disposition of funds. Fees and other moneys collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board"; substituted "board" for "state board of public accountancy"; added "subject to section 82A-1603(6)"; and made minor changes in phraseology, punctuation and style.

66-1817. Rule-making powers of the board. The board may make rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accountancy. At least sixty (60) days prior to the adoption of a rule or amendment, the department shall mail copies of the proposed rule or amendment to each holder of a license issued under section 66-1833, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least fifteen (15) days prior to the effective date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof.

History: En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board" in the second sentence; substituted "department's" for "secretary's" in the last sentence; and made minor changes in phraseology, punctuation and style.

66-1818. Examinations. Except as provided in section 82A-1603(4), the department shall hold and grade a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the department is final in each case. The department shall use the examination and grading services of the American Institute of Certified Accountants. The examination shall be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "Except as provided in section 82A-1603(4)" at the beginning of the section; substituted "de-

partment" for "members of the board" in the first sentence and for "examining committee" in the second and third sentences; substituted "board" for "examining committee" in the first and last sentences; and made minor changes in phraseology, punctuation and style.

66-1819. Certificates of certified public accountants. Certification as a certified public accountant is available to any person:

(1) Who is (a) a citizen of the United States or who has declared his intention of becoming a citizen, (b) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state, and (c) is of good moral character;

(2) Who has successfully passed the certified public accountants' examination; and

(3) Who meets the requirements of education and experience in sections 66-1823, 66-1824 and 66-1825.

History: En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974.

Amendments

The 1971 amendment deleted the re-

quirement that the applicant have attained the age of twenty-one years.

The 1974 amendment redesignated the subdivisions and clauses; deleted "66-1822" from subdivision (3) before "66-1823"; and made minor changes in phraseology.

66-1820. License of public accountants. Licensure as a public accountant is available to any person:

(1) Who is (a) a citizen of the United States or who has declared his intention of becoming a citizen, (b) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state, and (c) is of good moral character;

(2) Who meets the requirements of education and experience set forth in sections 66-1823, 66-1824 and 66-1825; and

(3) Who complies with the qualifications and requirements in any one of the subdivisions of section 66-1821.

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974.

Amendments

The 1971 amendment deleted the re-

quirement that the applicant have attained the age of twenty-one years.

The 1974 amendment redesignated the subdivisions and clauses; deleted "66-1822" from subdivision (2) before "16-1823"; and made minor changes in phraseology.

66-1821. Further requirements for licensure of public accountants.

(1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals, in this state, in the practice of public accounting as their principal occupation prior to service in the armed forces, may register with the department within six (6) months after the date of their separation from active service, and on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) A person who does not qualify under subdivision (1) must fulfill the following additional requirements, as a prerequisite to the issuance of a license as a licensed public accountant:

(a) He must pass the written examination in accounting practice, and

(b) He must also pass the written examination in either accounting theory or auditing, or instead of the examination in auditing or theory, he must be the holder of a United States Treasury card which is in good standing at the time of his sitting for the examination in accounting practice. The examinations referred to in this subdivision shall be those prescribed for subjects under section 66-1818, and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.

History: En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974.

Amendments

The 1974 amendment redesignated the

subsections and subdivisions; deleted a former first subsection relating to registration of public accountants engaged as principals on July 1, 1969 (see parent volume); substituted "July 1, 1969" near the be-

ginning of subsection (1) for "the effective date of this act"; deleted "(as distinguished from employees)" in subsection (1) after "principals"; substituted "de-

partment" in two places in subsection (1) for "board"; added the last sentence of subsection (1); and made minor changes in punctuation and phraseology.

66-1822. Repealed.

Repeal

Section 66-1822 (Sec. 10, Ch. 118, L. 1969), relating to education and experience

requirements for years ending December 31, 1971 and before, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1825. Applicability of education and experience requirements. (1)

None of the foregoing education and experience requirements apply to a candidate for certified public accountant who holds a current license as a public accountant, or who, on July 1, 1969, was employed as a staff accountant in this state by a practicing public accountant, and is so employed at the time of his examination.

(2) A candidate who is otherwise eligible may take the examination provided for in section 66-1818 before meeting the age and experience requirements but the successful completion of this examination does not qualify him for a certificate or a license as a public accountant until he meets these requirements.

(3) The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state, if when he took the examination he was not a resident of this state. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the most recent examination given in this state at the time of granting the credit.

(4) The experience requirements need not be continuous or for one (1) employer.

(5) Except as provided in subdivision (1) of this section, the applicable education and experience requirements are those in effect on the date of the examination by which the candidate successfully completes his examination; but the board may provide by rule for exceptions to the general rule in order to prevent what it determines to be undue hardship to candidates resulting from changes in the education and experience requirements.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974.

Amendments

The 1974 amendment redesignated the

subsections; substituted "July 1, 1969" in subsection (1) for "the effective date of this act"; substituted "board" throughout subsection (3) for "examining committee"; and made minor changes in phraseology.

66-1826. Powers of board. The board shall have power to prescribe, by uniform rule, for the following:

(a) to (c) * * * [Same as parent volume.]

(d) The fees to be charged each candidate for initial examinations and special examinations shall be commensurate with costs. With respect to re-

examinations, a fee commensurate with costs may be charged for each subject in which the candidate is re-examined.

History: En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977.

mensurate with costs in subdivision (d) for provisions that initial and special examination fees not exceed \$50 and re-examination fees not exceed \$10 for each subject.

Amendments

The 1977 amendment substituted the provisions that examination fees be com-

66-1829. Partnership composed of certified public accountants—registration thereof. (1) A partnership engaged in this state in the practice of public accounting may register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) At least one (1) general partner must be a certified public accountant of this state in good standing, and must hold a license issued under section 66-1833 which is in effect;

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant of this state in good standing and must hold a license issued under section 66-1833 which is in effect;

(c) Each partner must be a certified public accountant of some state in good standing; and

(d) Each staff member who is employed in this state, and who is certified under section 66-1819 or registered under section 66-1820, must hold a license issued under section 66-1833 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its partnership name. Notification shall be given the department within one (1) month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974.

section designations and redesignated the subdivisions; substituted "department" throughout the section for "board"; and made minor changes in punctuation and phraseology.

Amendments.

The 1974 amendment inserted the sub-

66-1829.1. Corporations composed of certified public accountants—registration. (1) A professional service corporation organized for the practice of public accounting may register with the board as a corporation of certified public accountants, provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(e) Each staff member who is employed within this state and who is certified under 66-1819 or registered under 66-1820 must also hold a license issued under 66-1833 which is in effect.

(f) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA's" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 10, L. 1977.

Title of Act

An act permitting incorporation of firms engaged in the practice of public accounting; regulating such practice; and providing for the registration of such corporations; and amending sections 66-1832, 66-1835, 66-1838, R. C. M. 1947.

Amendments

The 1977 amendment divided the section into numbered subsections and redesignated former subdivisions (1) through (6) as (1)(a) through (1)(f) respectively; substituted "this chapter" in subdivision (1)(a) for "the public accounting act"; substituted "rules" for "regulations" in subdivision (1)(a); and made minor changes in phraseology and style.

66-1830. Temporary certificate and temporary license. (1) If an applicant for a certificate as a certified public accountant meets the requirements for the certificate, other than the residence requirement, the board may, in its discretion authorize the department to, issue to him a temporary certificate as a certified public accountant which is effective only until the board notifies him that his application has been either granted or re-

jected. In no event may a temporary certificate be in effect for more than twelve (12) months.

(2) If an applicant for licensure as a public accountant meets the requirements for licensing, other than the residence requirement, the board may, in its discretion, authorize the department to issue to him a temporary license, as a licensed public accountant, which is effective only until the board notifies him that his application has been either granted or rejected. In no event may a temporary license be in effect for more than twelve (12) months.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974.

the department" before "issue" in the first sentences of subsections (1) and (2); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment inserted "authorize

66-1831. Partnerships composed of public accountants — registration thereof. (1) A partnership engaged in this state in the practice of public accounting may register with the department as a partnership of public accountants provided it meets the following requirements:

(a) At least one (1) general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 which is in effect;

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 which is in effect;

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 66-1833 which is in effect; and

(d) Each staff member employed within this state, and who is certified under section 66-1819 or registered under section 66-1820, must hold a license issued under section 66-1833 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a license to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within one (1) month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974.

partment" for "board" in the first and last sentences; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "de-

66-1831.1. Corporations composed of public accountants—registration thereof. (1) A professional service corporation organized for the practice of public accounting may register with the board as a corporation of public accountants, provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(e) Each staff member who is employed within this state and who is certified under 66-1819 or registered under 66-1820 must also hold a license issued under 66-1833 which is in effect.

(f) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA's" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977.

Amendments

The 1977 amendment divided the section into numbered subsections and re-

designated former subdivisions (1) through (6) as (1)(a) through (1)(f); substituted "this chapter" in subdivision (1)(a) for "the public accounting act"; substituted "rules" for "regulations" in subdivision (1)(a); and made minor changes in phraseology, punctuation and style.

66-1832. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corpora-

tion of licensed public accountants or by one registered under 66-1828 shall be registered annually with the department. A fee may not be charged for this registration. The principals of sole proprietorships and staff employees who are employed in this state and who are holders of certificates as certified public accountants must also hold licenses issued under 66-1833 which are in effect. Partnerships and corporations must be registered under 66-1829, 66-1829.1, 66-1831, or 66-1831.1, whichever is applicable, and foreign accountants under the provisions of 66-1828.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977.

Amendments

Chapter 207, Laws of 1974, inserted "or corporation" after "partnership" in two places in the first sentence; substituted "department" for "board" in the first sentence; inserted "and corporations" after "partnerships" in the last sentence; and

made minor changes in phraseology and style.

Chapter 350, Laws of 1974, substituted "department" for "board" in the first sentence; and made minor changes in phraseology and style.

The 1977 amendment deleted "under this act" after "annually" near the end of the first sentence; inserted "66-1829.1" and "or 66-1831.1" in the last sentence; and made minor changes in phraseology and style.

66-1833. Annual licenses to practice. Annual licenses to engage in the practice of public accounting in this state shall be issued by the department to holders of the certificate of certified public accountant issued under section 66-1819 and to persons licensed under section 66-1820, if all offices, if any, of the certificate holder or licensed public accountant are maintained and registered under section 66-1832. There is an annual license fee in an amount to be determined by the board, not to exceed twenty-five dollars (\$25) for a year or part thereof. Annual licenses expire on December 31 of each year and may be renewed annually for a period of one (1) year by certificate holders and licensed public accountants in good standing on payment of an annual renewal fee of not to exceed twenty-five dollars (\$25). Failure of a certificate holder or licensed public accountant to apply for the annual license to practice within three (3) years from the expiration date of the annual license to practice last obtained or renewed, or three (3) years from the date on which the certificate holder or licensee was granted his certificate or license, deprives him of the right to the annual license, unless the board, in its discretion, determines the failure to have been due to excusable neglect. A certificate holder or licensed public accountant who is retiring from active practice or other employment because of illness, age, marriage, or other justifiable cause, in the opinion of the board, may be placed on an inactive list, without prejudicing his right to be issued an annual license at a future date. A request for inactive status must be sent to the department within the three-year period as outlined in this section.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "annual"

before "license" and "licenses" throughout the section; substituted "department" for "board" in the first and last sentences; and made minor changes in phraseology, punctuation and style.

66-1835. Revocation or suspension of partnership or corporation registration. After notice and hearing as provided in section 66-1836, the board

shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this act under which it qualified for registration.

History: En. Sec. 23, Ch. 118, L. 1969; **Amendments**
amd. Sec. 4, Ch. 207, L. 1974. The 1974 am

The 1974 amendment inserted "or corporation" after "partnership."

66-1836. Hearings before board. (1) The board may initiate proceedings under this act either on its own motion or on the complaint of a person. Hearings and rule-making proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969;
amd. Sec. 175, Ch. 350, L. 1974.

sentence for nine paragraphs relating to procedure for hearings before the board (for prior law, see parent volume); and made minor changes in style.

Amendments

The 1974 amendment substituted the last

66-1837. Reinstatement. On application in writing and after hearing pursuant to notice, the board may authorize the department to issue a new certificate to a certified public accountant whose certificate has been revoked, or may permit the relicensing of anyone whose license has been revoked, or may reissue or modify the suspension of a license to practice public accounting which has been revoked or suspended.

History: En. Sec. 25, Ch. 118, L. 1969;
amd. Sec. 176, Ch. 350, L. 1974.

the department to" before "issue a new certificate"; and made minor changes in phraseology.

Amendments

The 1974 amendment inserted "authorize

66-1838. Acts declared unlawful. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant under 66-1819, holds a license issued under 66-1833 which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 66-1832. However, a foreign accountant who has registered under the provisions of 66-1828 and who holds a current license issued under 66-1833 may use the title under which he is generally known in his country followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 66-1829 or 66-1829.1, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation,

words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person is registered as a licensed public accountant under 66-1820, holds a current license issued under 66-1833, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 66-1832 or unless such person has received a certificate as a certified public accountant under 66-1819, holds a current license issued under 66-1833, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 66-1831, 66-1831.1, 66-1829, or 66-1829.1, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountants", or any other other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant", or any of the abbreviations "CA", "EA", "RA", or "LA" or similar abbreviations likely to be confused with "CPA". However, anyone who holds a current license issued under 66-1833 and all of whose offices in the state for the practice of public accounting are maintained and registered as required under 66-1832 may hold himself out to the public as an "accountant" or "auditor" as provided in subsections (1), (2), (3), and (4); and a foreign accountant registered under 66-1828 who holds a current license issued under 66-1833 and all of whose offices in this state for the practice of public accounting are maintained and registered as required under 66-1832 may use the title under which he is generally known in this country followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business, with any wording indicating that he is an accountant or auditor or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current license issued under 66-1833 and all of his offices in this state for the practice of public accounting are maintained and registered under 66-1832. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name, with any wording indicating that it is a partnership or corporation composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 66-1829, 66-1829.1, 66-1831, or 66-1831.1 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and Company" or "and Co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 66-1829, 66-1829.1, 66-1831, or 66-1831.1. However, a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on July 1, 1969, may continue to do so if he or it otherwise complies with the provisions of this chapter; and further, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977.

Amendments

The 1974 amendment deleted former subsections (f) and (i) which prohibited corporations from serving as accountants or auditors under the act; inserted "or corporation" throughout the section; and made minor changes in phraseology and punctuation.

The 1977 amendment redesignated for-

mer subsections (a) through (h) as (1) through (8); inserted "or 66-1829.1, whichever is applicable" in subsection (2); inserted "66-1831.1" and "or 66-1829.1, whichever is applicable" in subsection (4); substituted "subsections (1), (2), (3), and (4)" near the middle of subsection (5) for "subparagraphs (a), (b), (c), and (d)"; inserted "66-1829.1" and "or 66-1831.1" near the middle of subsection (8); and made minor changes in phraseology, punctuation and style.

CHAPTER 19—REAL ESTATE LICENSE ACT

Section

- 66-1924. Title—license required.
- 66-1925. Definitions.
- 66-1926. Exempted classes.
- 66-1927. Board—powers and duties—compensation.
- 66-1927.1. Board chairman.
- 66-1929. Licenses—applicants for licenses.
- 66-1930. Written examination—contents—time and place—exemptions.
- 66-1931. License—issuance—suspension—revocation.
- 66-1932. License—delivery—display—pocket card.
- 66-1933. Bond of brokers and salesmen.
- 66-1934. Fees—when due.
- 66-1935. Requirements for office—employment of salesmen—issuance and display of license.
- 66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process.
- 66-1937. Grounds for refusal—suspension or revocation of license.
- 66-1938.1. Hearings—procedure.
- 66-1940. Penalties—legal actions.
- 66-1943. Real estate meetings and clinics open to all licensees.
- 66-1944. Attorney for board.
- 66-1945. Publication of directory.
- 66-1946. No effect on 94-6-307 or 94-6-308.

66-1924. Title—license required. (1) This act may be cited as the “Real Estate License Act of 1963.”

(2) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman, or otherwise complying with this act.

(3) Corporations, partnerships, and associations may not be licensed under this act. A corporation or a partnership may act as a real estate broker if every corporate officer, and every partner, performing the functions of a “broker” as defined in section 66-1925(2), is licensed as a broker. All officers of a corporation or all members of a partnership, acting as a broker, are in violation of this act unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974.

Amendments

The 1974 amendment added subsection (3); and made minor changes in phraseology, punctuation and style.

66-1925. Definitions. Unless the context requires otherwise, in this act:

(1) “Real estate” includes leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(2) “Broker” includes an individual who for another, or for a fee, commission, or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term “broker” also includes an individual employed by or on behalf of the owner or lessor of real estate, to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration; it also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose, or for referral of information concerning real estate to brokers, or both; and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining for purchase or lease any real estate.

(3) “Salesman” includes an individual who, for a salary, commission, or compensation of any kind, is employed, either directly, indirectly, regularly, or occasionally, by a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(4) “Person” includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this act it means an individual.

(5) "Board" means the board of real estate, provided for in section 82A-1602.23.

(6) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975.

Amendments

The 1974 amendment deleted a portion of subsection (2) prohibiting licensure of corporations, partnerships and associations

under the act; added the definitions of "Board" and "Department"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment added "and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining for purchase or lease any real estate" at the end of subsection (2).

66-1926. Exempted classes. A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not:

(1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor;

(2) apply to any person acting as attorney-in-fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting, or leasing of any real estate;

(3) be construed to include in any way the services rendered by any attorney-at-law in the performance of his duty as such attorney-at-law;

(4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such officer;

(6) apply to public officials in the conduct of their official duties;

(7) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing complexes for low income persons which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977.

Amendments

The 1977 amendment added subdivision (8); and made minor changes in phraseology, punctuation and style.

66-1927. Board—powers and duties—compensation. (1) The board shall from time to time adopt rules to carry out the provisions of this act.

(2) The department shall keep a record of proceedings, transactions, communications and official acts of the board, be custodian of the records of the board and shall cause to be performed other duties as the board on the written request of two (2) or more members of the board or at other times as the chairman in his discretion considers necessary. Neither the chairman nor an employee of the department, hired to provide services to the board, may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(3) Each member of the board shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents (\$7.50) and travel expenses, as provided for in sections 59-538, 59-539, and 59-801, connected with the performance of other duties provided for by the board.

(4) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 438, L. 1975.

Amendments

The 1974 amendment deleted portions of the section relating to the creation and powers of the Montana state real estate commission; substituted "board" for "commission" throughout the section; substituted "department" for "chairman" at the beginning of subsection (2); substituted "department" for "commission" in the second sentence of subsection (2) and in-

serted "hired to provide services to the board"; substituted "department" for "commission" in the second sentence of subsection (4); deleted a subsection relating to collection and deposit of fees, and expenditures of the commission; and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary expenses"; and made minor changes in phraseology.

66-1927.1. Board chairman. The members of the board shall elect a chairman from among their number.

History: En. Sec. 2, Ch. 378, L. 1977.

board of real estate; amending section 82A-1602.23, R.C.M. 1947.

Title of Act

An act to revise the makeup of the

66-1928. Repealed.

Repeal

Section 66-1928 (Sec. 5, Ch. 250, L. 1963), relating to surplus funds of the

commission in the earmarked revenue fund, was repealed by Sec. 1, Ch. 112, Laws 1973.

66-1929. Licenses — applicants for licenses. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall be a citizen of the United States; shall be at least eighteen (18) years of age; shall have

graduated from an accredited high school or completed an equivalent education as determined by the board; shall have been actively engaged as a licensed real estate salesman for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this two (2) year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement; and shall file an application for license with the department. The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(3) An applicant for a salesman's license shall be at least eighteen (18) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board; and must file an application for license with the department. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974.

Amendments

The 1971 amendment reduced the age specified in each of subsections (2) and (3) from 21 to 18 years.

The 1974 amendment substituted "board" for "commission" throughout the section; substituted "department" for "commission" at the end of the first sentence in subsection (2), at the end of the first sentence in subsection (3), and at the beginning of the last sentence in subsection (3); and made minor changes in phraseology, punctuation and style.

66-1930. Written examination — contents — time and place — exemptions. In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each six (6) months and at places within the state the board prescribes. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination is ineligible for a further examination for six (6) months.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission" in two places; deleted a

proviso permitting licensed brokers and salesmen in business at the effective date of the original act to obtain a new license

without examination; and made minor changes in phraseology, punctuation and style.

66-1931. License—issuance—suspension—revocation. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this act.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission" and made a minor change in phraseology.

66-1932. License—delivery—display—pocket card. The board shall prescribe the form of license. A license shall bear the seal of the board. The license of a real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of the broker. A broker shall display his own license conspicuously in his place of business. The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker employing the real estate salesman.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board"

for "commission" in the first and second sentences; substituted "department" for "commission" in the last sentence; and made minor changes in phraseology.

66-1933. Bond of brokers and salesmen. No license may be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the department in the sum of \$10,000 executed by a surety company authorized to do business in this state in a form approved by the board and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with this chapter and shall pay, to the extent of \$10,000, judgments recovered against him for loss or damage to a person arising in the course of the applicant's practice as a real estate broker or salesman. Bonds given by licensees under this chapter, after approval, shall be filed and held in the office of the department. If for any reason the bond of a broker or salesman is canceled or voided, the license of the broker or salesman is automatically suspended until the broker or salesman is again fully bonded and the bond has been approved by the board. If the suspension is not terminated by rebonding and approval within 30 days from the date of suspension, the license of the broker or salesman is automatically revoked.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977.

Amendments

The 1974 amendment substituted "approved by the board" in the first and third sentences for "approved by the commis-

sion"; substituted "department" for "commission" in the first sentence after "filed bond with the"; substituted "department" for "commission" in the second sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "chapter" for "act" in two places; and made minor changes in punctuation and style.

66-1934. Fees—when due. (1) The following fees shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to section 82A-1603(6):

- (a) For each examination, a fee not to exceed \$25.
- (b) For each original resident broker's license issued, a fee not to exceed fifty dollars (\$50).
- (c) For each annual renewal of a resident broker's license, a fee not to exceed \$30.
- (d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars (\$50).
- (e) For each annual renewal of a nonresident broker's license, a fee not to exceed \$30.
- (f) For each original salesman's license issued, a fee not to exceed twenty-five dollars (\$25).
- (g) For each annual renewal of a salesman's license, a fee not to exceed \$15.
- (h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars (\$25).
- (i) For each change of place of business or change of employer or contractual associate, a fee not to exceed \$15.
- (j) For each duplicate license, where the original license is lost or destroyed and affidavit is made, a fee not to exceed ten dollars (\$10).
- (k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed ten dollars (\$10).

(2) The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least one (1) year has passed since the fee for that particular item was last increased or decreased.

(3) Annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance, unless suspended or revoked by the board for just cause.

(4) No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

(5) No member of the board may be reimbursed from the board's earmarked revenue fund for travel outside the state on business of the board.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977.

Amendments

The 1974 amendment substituted "department" for "commission" in the first sentence of subsection (1) and inserted

"for use of the board, subject to section 82A-1603(6)"; substituted "board" for "commission" in subsections (2) and (3); and made minor changes in phraseology, punctuation and style.

The 1977 amendment decreased the maximum fees from \$50 to \$25 in subdivision (1)(a), from \$50 to \$30 in sub-

divisions (1)(c) and (1)(e), and from \$25 added subsections (4) and (5); and made to \$15 in subdivisions (1)(g) and (1)(i); minor changes in style.

66-1935. Requirements for office—employment of salesmen—issuance and display of license. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman in the employ of or under contract with the broker shall be prominently displayed in the office. The address of the office and a branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the department before removal or within ten (10) days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall be issued.

(2) A salesman may not be employed by, or under contract to, more than one (1) licensed broker nor may he perform services for a broker other than the one designated on the license issued to the salesman. When a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. On termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the department for cancellation.

(3) Only one (1) license shall be issued to a salesman to be in effect at one time.

History: En. Sec. 12, Ch. 250, L. 1963; Listing Violation
amd. Sec. 186, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commission" throughout the section; and made minor changes in phraseology, punctuation and style.

Broker who obtained listing through efforts of unemployed real estate salesman was in violation of this section. *Johnson v. Doran*, — M —, 540 P 2d 306.

66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process. (1) It is unlawful for a licensed broker to employ or compensate directly or indirectly a person for performing the acts regulated by this act who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state, and who has been licensed in the other state to conduct this business in that state, may obtain a license as a broker in this state by complying with this act. However, this section applies only to those brokers of other states which offer the same privileges to the licensed brokers of this state.

The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination, if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state, and by paying to the department the same license fee as is required for obtaining a broker's license in this state. The board may, in its discretion, refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.

(3) A nonresident broker shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident broker in a county of this state which may be appropriate and designated by section 93-2904; and the consent shall provide that service of summons in this action may be served on the department, for and on behalf of the nonresident broker, and this service is sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent conducting a transaction in a county. The consent shall be acknowledged, and if made by a corporation, shall be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974.

partment" for "commission" twice in the fourth sentence of subsection (2); substituted "department" for "chairman of the commission" in the first sentence of subsection (3); deleted a portion of subsection (3) relating to service of process; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted references to the board authorizing the department to issue licenses for references to the commission issuing licenses in two places in subsection (2); substituted "de-

66-1937. Grounds for refusal—suspension or revocation of license. The board may, on its own motion, and shall, on the sworn complaint in writing of a person, investigate the actions of a real estate broker or a real estate salesman, subject to sections 82A-1603 and 82A-1604, and may revoke or suspend a license issued under this act when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) Intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade, or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit money coming into his possession belonging to others;

(6) Accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) Guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) Inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written outstanding contract in connection with the property, granting an exclusive agency to another broker;

(13) Soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) Paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this act;

(17) Intentionally violating a rule adopted by the board in the interests of the public and in conformity with this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) Conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission" in the first sentence and in subdivision (17); inserted "subject to sections 82A-1603 and 82A-1604" in the first sentence; and made minor changes in phraseology, punctuation and style.

Fraudulent Listing

Broker, who obtained exclusive listing through a discharged real estate salesman and assured seller that he would "get rid" of a prior exclusive listing of same property which seller had made with another broker, was in violation of this section. *Johnson v. Doran*, — M —, 540 P 2d 306.

66-1938.1. Hearings—procedure. (1) When the board has investigated an application for a real estate broker's or salesman's license or, subject to sections 82A-1603 and 82A-1604, investigated the actions of a real estate broker or salesman on the sworn complaint in writing of a person, or on its own motion, and the investigation has revealed reasonable grounds for denying the application, or reasonable indication of a violation of this act as cause for revoking or suspending a license issued to a real estate broker or salesman, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission" in two places; inserted

"subject to sections 82A-1603 and 82A-1604"; deleted portions of the section relating to service of process and the procedure for a hearing; and made minor changes in phraseology, punctuation and style.

66-1939. Repealed.

Repeal

Section 66-1939 (Sec. 16, Ch. 250, L. 1963), relating to appeals from decisions

of the commission, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-1940. Penalties—legal actions. (1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked, or any person who violates any provision of this act, shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than \$100 or more than \$500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than \$500 or more than \$2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977.

Amendments

The 1977 amendment deleted the former last subsection which provided for civil actions against brokers, salesmen, and their sureties and provided that penalties under the section be collectible against the bonds of brokers' and salesmen; and made minor changes in style.

suffered damage thereby; evidence that broker received commission is not sufficient proof of damage; sellers who exchanged their equity in residence for cash sufficient to pay broker's commission and assignment of buyer's interest in an installment promissory note were not entitled to recovery from broker when only two installments were paid on note in absence of evidence that note was valueless; sellers who made no attempt to contact debtors for payment or to contact buyers for information or assistance were not yet damaged since note might still be fully collectible with interest. *Denny v. Brissonneaud*, — M —, 506 P 2d 77.

Proof of Injury

To recover under this section, plaintiff must show not only that real estate broker violated this act but also that plaintiff

66-1943. Real estate meetings and clinics open to all licensees. (1) The board may, subject to section 82A-1603, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

History: En. Sec. 20, Ch. 250, L. 1963; for "commission" in subsections (1) and
amd. Sec. 190, Ch. 350, L. 1974. (2); inserted "subject to section 82A-1603"
in subsection (1); and made minor changes
in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "board"

66-1944. Attorney for board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this act. Fees and expenses of the attorney general acting in this capacity shall be paid out of board moneys in the earmarked revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963; for "commission" in two places; and made
amd. Sec. 191, Ch. 350, L. 1974. minor changes in phraseology, punctuation
and style.

Amendments

The 1974 amendment substituted "board"

66-1945. Publication of directory. The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963; partment" for "commission" at the begin-
amd. Sec. 192, Ch. 350, L. 1974. ning of the section and "board determines"
for "commission may determine" near the
end of the section.

Amendments

The 1974 amendment substituted "de-

66-1946. No effect on 94-6-307 or 94-6-308. Nothing contained herein may be construed to amend or modify 94-6-307 or 94-6-308. This chapter shall be construed to be supplemental to 94-6-307 and 94-6-308.

History: En. Sec. 25, Ch. 250, L. 1963; after "modify"; twice substituted refer-
amd. Sec. 16, Ch. 10, L. 1977. ences to "94-6-307 and 94-6-308" for
references to section 94-1822 of the Re-
vised Codes of Montana of 1947; and made
minor changes in phraseology and style.

Amendments

The 1977 amendment deleted "or repeal"

CHAPTER 21—TITLE ABSTRACTERS—REGULATION

Section

66-2101.1. Definitions.

66-2102. [Transferred.]

66-2103. Organization of board.

66-2104. Compensation of members of board—disposition of funds.

66-2105. Records of board.

66-2108. Examination of applicants.

66-2110. Certificate of registration—contents and issuance—temporary certificates.

66-2111. Certificate of authority—contents and issuance.

66-2114. Seal.

66-2115. Regulation of abstracters—violations.

66-2101.1. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of abstracters, provided for in section 82A-1602.1; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Registered abstracter" means a person who has obtained a certificate of registration by the board under this act.

History: En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974.

66-2102. [Transferred.]

Compiler's Notes

Section 194, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.1.

66-2103. (4139.3) Organization of board. The board shall elect a chairman and a secretary. The board may compel the attendance of witnesses, and the chairman and secretary may administer oaths. The board may make rules necessary for the administration of this act.

History: En. Sec. 3, Ch. 105, L. 1931; providing that the secretary need not be a board member but must be a registered abstracter; deleted a clause that the board shall have a seal; and made minor changes in phraseology.

Amendments

The 1974 amendment deleted a sentence amd. Sec. 195, Ch. 350, L. 1974.

66-2104. (4139.4) Compensation of members of board—disposition of funds. (1) Each member of the board shall receive a compensation of \$25 per day for actual services while attending meetings or otherwise engaged in business connected with the board and shall receive travel expense reimbursement as provided for in 59-538, 59-539, and 59-801.

(2) Money received under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 82A-1603(6).

History: En. Sec. 4, Ch. 105, L. 1931; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 214 and once by Ch. 439. The amendments were in conflict and the compiler set forth both versions designated as sections 66-2104(1) and 66-2104(2), respectively. The version designated as (1) was repealed by Sec. 36, Ch. 101, Laws 1977 and section 66-2104 was amended by Sec. 17 of that Chapter.

Amendments

The 1974 amendment added "subject to section 82A-1603(6)" to subsection (2); and made minor changes in phraseology.

Chapter 214, Laws of 1975, increased the compensation of members from \$5 to \$25 per day and substituted "shall receive mileage as authorized by section 59-801 and actual expenses" in subsection (1) for "shall receive ten cents (\$.10) per mile for each mile actually traveled, and five dollars (\$5) per day for expenses."

Chapter 439, Laws of 1975 substituted "shall receive travel expense reimbursement as provided for in sections 59-538, 59-539, and 59-801" for the phrase quoted in Chapter 214 amendment.

The 1977 amendment increased the members' compensation from \$5 to \$25 per day; substituted "chapter" for "act" in subsection (2); and made minor changes in punctuation and style.

66-2105. (4139.5) Records of board. The department shall keep a register of the names of applicants for registration, and for certificates of

authority, with their place of business and other information the board considers appropriate, including the action taken by the board, and the dates on which certificates of registration and certificates of authority are issued.

History: En. Sec. 5, Ch. 105, L. 1931; amd. Sec. 197, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board"; and made minor changes in phraseology.

66-2107. Repealed.

Repeal

Section 66-2107 (Sec. 7, Ch. 105, L. 1931), relating to a definition of registered ab-

stracters, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2108. (4139.8) Examination of applicants. A person desiring to obtain a certificate of registration under this act shall make application to the department and shall pay to the department an examination fee not to exceed fifty dollars (\$50) and as set by the board. The application shall be on a form prescribed by the board and shall contain information desired by the board. The board shall fix a date and place for the examination of the applicant, of which notice shall be given the applicant by mail, who shall present himself at the examination. The department, subject to section 82A-1603, shall examine the applicant under the rules adopted by the board.

History: En. Sec. 8, Ch. 105, L. 1931; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975.

sentences; inserted "subject to section 82A-1603" in the last sentence; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "department" for "board" in the first and last

The 1975 amendment increased the examination fee from \$25 to "not to exceed fifty dollars (\$50) and as set by the board."

66-2109. Repealed.

Repeal

Section 66-2109 (Sec. 9, Ch. 105, L. 1931), relating to registration without examina-

tion of abstracters previously certified, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2110. (4139.10) Certificate of registration—contents and issuance—temporary certificates. (1) The certificate of registration issued by the department shall recite, among other things, that the holder has complied with this act, and entitles the holder to take charge of an abstract office holding a certificate of authority under this act.

(2) Certificates of registration shall be issued on the payment of a five dollar (\$5) fee and are valid for one (1) year from the date of issuance and shall be renewed annually by the department on application within thirty (30) days prior to expiration and on payment of not to exceed five dollars (\$5) to the department and as set by the board. The board may authorize the department to issue temporary certificates of registration between meetings of the board.

History: En. Sec. 10, Ch. 105, L. 1931; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975.

Amendments

The 1974 amendment substituted references to the department throughout the section for references to the board or its

secretary; inserted "authorize the department" in the last sentence; and made minor changes in phraseology, punctuation and style.

The 1975 amendment increased the renewal fee in subsection (2) from \$1.00 to "not to exceed five dollars (\$5) to the department and as set by the board."

66-2111. (4139.11) Certificate of authority—contents and issuance.

(1) A person, firm, or corporation desiring to obtain a certificate of authority under this act shall make application to the department and shall pay to the department an application fee not to exceed twenty-five dollars (\$25) as set by the board. The application shall be on a form prescribed by the board and shall contain information desired by it.

(2) A person, firm, or corporation, who furnishes satisfactory proof to the board that the applicant has for use in the business a set of abstract books or other system of indices and has in charge of the business a registered abstracter, and who furnishes the bond, or other securities, and pays the application fee is entitled, on compliance with this law, to receive a certificate of authority.

(3) Certificates of authority are valid for one (1) year from the date of issuance and shall be renewed by the department on application within thirty (30) days prior to expiration and on payment of a fee not to exceed twenty-five dollars (\$25) to the department which fee shall be set by the board. The application shall be accompanied by an affidavit and such other evidence considered necessary, showing that the applicant has complied with this act.

(4) The certificate of authority issued by the department shall, among other things, recite that the bond or other securities have been filed and approved, and the certificate authorizes the person, firm, or corporation, named in it, to engage in and carry on the business of an abstracter of real estate titles in the county or counties of this state, in which the person, firm, or corporation has for use a set of abstract books or system of indices provided for in section 66-2101, and for that purpose to have access to the public records in an office of a city, county, or of the state during office hours, and to make memoranda or notation therefrom as may be necessary for the purpose of making abstracts, and the compiling, posting, copying, and keeping up of their abstract books, indices, or records, access to be during ordinary office hours.

History: En. Sec. 11, Ch. 105, L. 1931; amd. Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975.

Amendments

The 1974 amendment substituted references to the department throughout the section for references to the board and its secretary; deleted "as provided for in section 66-2101" after "registered abstracter"

in subsection (2); and made minor changes in phraseology, punctuation and style.

The 1975 amendment increased the application and renewal fees from \$5 to "not to exceed twenty-five (\$25)" in subsections (1) and (3); and added "as set by the board" and "which fee shall be set by the board" to each fee provision, respectively.

66-2112. (4139.12) Repealed.

Repeal

Section 66-2112 (Sec. 12, Ch. 105, L. 1931; Sec. 1, Ch. 82, L. 1939), relating to

conditions under which abstract books or indices are not required, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2113. (4139.13) Repealed.**Repeal**

Section 66-2113 (Sec. 13, Ch. 105, L. 1931; Sec. 201, Ch. 350, L. 1974), relating

to bonds of title abstracters, was repealed by Sec. 4, Ch. 541, Laws 1977.

66-2114. (4139.14) Seal. A person, firm, or corporation furnishing abstracts of title to real property under this act shall provide a seal, which shall have stamped on it the name and location of the person, firm, or corporation; and shall deposit with the department an impression of the seal and the names of persons authorized to sign certificates to abstracts before the certificate of authority may be issued. The seal shall be affixed to every abstract or certificate of title issued by the person, firm, or corporation, and to every continuation thereof.

History: En. Sec. 14, Ch. 105, L. 1931; amd. Sec. 202, Ch. 350, L. 1974.

partment" for "board" near the middle of the section; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

66-2115. (4139.15) Regulation of abstracters—violations. (1) The board may cancel and revoke a certificate of registration issued to a person under this act for a violation of this act or on a conviction of the holder of the certificate of a crime involving moral turpitude or if the board finds the holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person, firm, or corporation under this act for failure to maintain indices and abstract records or for failure to have in charge of the business a registered abstracter or for violation of this act.

(2) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the board to show cause why the certificate should not be canceled.

History: En. Sec. 15, Ch. 105, L. 1931; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977.

The 1977 amendment deleted "for failure to furnish the bond or other securities required by section 66-2113, or new or additional bonds the board considers necessary, or" after "under this act" in the second sentence of subsection (1); and made minor changes in punctuation.

Amendments

The 1974 amendment rewrote subsection (2) relating to violations under the act (for prior law, see parent volume); and made minor changes in phraseology, punctuation and style.

66-2120. (4142) Repealed.**Repeal**

Section 66-2120 (Sec. 4, Ch. 43, L. 1915),

relating to abstracts as evidence, was repealed by Sec. 36, Ch. 101, Laws 1977.

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE**Section**

66-2201. [Transferred.]

66-2201.1. Definitions.

66-2202. Organization of board—quorum—powers.

- 66-2203. Expenses and funds—records and reports.
- 66-2204. Applications for license to practice—examinations—fees.
- 66-2207. Issuance, registration and reinstatement of licenses.
- 66-2208. Display of license and certificate—arrangement with other boards.
- 66-2209. Veterinary medicine defined.
- 66-2210. Veterinary medicine—denial, suspension, and revocation of license and certificate.
- 66-2211. Interpretation of statute—persons not embraced within provisions.
- 66-2212. Practice in violation of law—penalties.
- 66-2213. Veterinary technicians—definitions—examinations.
- 66-2214. Veterinary technology—denial, suspension, and revocation of licenses or certificates.
- 66-2215. Injunction.

66-2201. [Transferred.]

Compiler's Notes

Section 204, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.24.

66-2201.1. Definitions. Unless the context requires otherwise, in this act:

- (1) "Board" means the board of veterinarians, provided for in section 82A-1602.24; and
- (2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974.

66-2202. (3218) Organization of board — quorum — powers. (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer, and shall hold at least two (2) regular meetings each year. At a meeting four (4) members of the board constitute a quorum. If a member of the board, without cause, absents himself from two (2) of its regular meetings consecutively, his office is vacant.

(3) The board may adopt rules and orders necessary for the performance of its duties; prescribe forms for application for examination and license; prepare examinations and the department shall, subject to section 82A-1603, supervise the examination of applicants for license to practice veterinary medicine; obtain the services of professional examination agencies instead of its own preparation of examinations; and grant and revoke licenses.

(4) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R. C. M. 1921; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975.

Amendments

The 1974 amendment substituted "board member" for "veterinary medical examiner" in subsection (1); substituted "de-

partment" for "board" in subsections (3) and (4); inserted "subject to section 82A-1603" near the middle of subsection (3); and made minor changes in phraseology, punctuation and style.

The 1975 amendment increased the quorum requirement from three members to four members in subsection (2).

66-2203. (3219) Expenses and funds—records and reports. (1) Each member of the board is entitled to receive travel expenses, as provided for in sections 59-538, 59-539, and 59-801. In addition, each member of the board may receive compensation of \$25 per day for attending board meetings.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records, and are at all times open to public inspection.

(3) Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977.

Amendments

The 1974 amendment deleted a sentence from subsection (1) providing for a salary for the secretary-treasurer of the board;

substituted "department" for "board" at the beginning of subsection (2); added "subject to section 82A-1603(6)" to the end of subsection (3); and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" in subsection (1) for "necessary traveling and subsistence expenses."

The 1977 amendment added the second sentence to subsection (1).

66-2204. (3220) Applications for license to practice—examinations—fees. (1) A citizen of the United States desiring to begin the practice of veterinary medicine or veterinary surgery in this state, or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to the department for a license to do so. The application shall be on a form furnished by the department, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a fee of twenty-five dollars (\$25), which may not be refunded. Subject to section 82A-1603, the board shall, by means of examination, either oral, written or practical, or a combination of oral, written or practical as the board determines, ascertain the professional qualifications for license of applicants under this act. An investigation under reciprocity arrangements may replace examination for licensees from other states under section 66-2208. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held in January and June of each year at a time and place specified by the board. The examination shall cover theory

and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects, chosen by the board, which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received and note on each the disposition made of it and preserve them for reference, and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at a subsequent examination, and shall pay another application fee in the amount of twenty-five dollars (\$25), and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination, if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974.

Amendments

The 1971 amendment deleted "who is over the age of twenty-one (21) years" following "citizen of the United States" at the beginning of the section; and made minor changes in style.

The 1974 amendment substituted references to department for references to the board of examiners and board throughout the section; inserted "subject to section 82A-1603" near the middle of subsection (1); substituted "pharmacology" for "materia medica" and "animal sanitation" for "livestock sanitation" in subsection (2); deleted a clause from subsection (3) relating to veterinarians in practice at time of passage of act; and made minor changes in phraseology, punctuation and style.

66-2205, 66-2206. (3221, 3222) Repealed.

Repeal

Sections 66-2205 and 66-2206 (Secs. 5, 6, Ch. 82, L. 1913; Sec. 2, Ch. 150, L. 1919),

relating to a farrier's license, were repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2207. (3223) Issuance, registration and reinstatement of licenses.

(1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of section 66-2208, if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal, and shall be signed by the president and secretary-treasurer of the board, and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law, and that after full examination or investigation under reciprocity arrangements he has been found qualified to practice.

(3) A person licensed to practice veterinary medicine in this state shall procure from the department before July 1, annually, his certificate

of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board, not exceeding the sum of twenty-five dollars (\$25) and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination during the six (6) months preceding July 1 shall be granted renewals without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued. Failure of a person licensed to procure a certificate of registration before July 1 annually constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within one (1) year of the forfeiture setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee not in excess of twenty-five dollars (\$25) as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements required of all licensees recited above. The person making application for restoration of license within one (1) year of its forfeiture is not required to submit to examination.

(4) Notwithstanding any other provisions in this chapter, a person licensed who enters, or is called to active duty by, a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within one (1) year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within one (1) year after release or discharge is the equivalent of a failure to procure a certificate of registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(5) A person licensed shall at all times have his residence and office address on file with the department.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R. C. M. 1921; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975.

Amendments

The 1974 amendment substituted "board" for "state board of veterinary medical examiners" in subsection (1); inserted "authorize the department to" before "issue a license" in subsection (1); substituted "department" for references to the board and secretary of the board in subsections (3) through (5); and made minor changes in phraseology, punctuation and style.

The 1975 amendment increased the registration and restoration fees from a maximum of \$10 to a maximum of \$25; added "and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board" to the end of the second sentence of subsection (3); inserted the third sentence of subsection (3); and added "and by presentation of evidence * * * recited above" to the end of the next-to-last sentence of subsection (3).

66-2208. (3224) Display of license and certificate—arrangement with other boards. (1) A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this act.

(2) The board may make arrangement with similar boards in the several states in so far as practicable, whereby due credit for state and territorial licenses may be allowed in this state to the licensees of these boards who desire to secure a license to practice veterinary medicine in this state, and by which licensees of the board in this state may secure credit for license issued by this board, when the licensees desire to secure a license to practice in another state or territory. No arrangement may be made under this section which may lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity. No license may be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least one (1) year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R. C. M. 1921; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of veterinary medical examiners" in subsection (2); and made minor changes in phraseology, punctuation and style.

66-2209. (3325) Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) Represents himself as or is engaged in the practice of veterinary medicine in any of its branches either directly or indirectly.

(b) Uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) Diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature, or performs a surgical operation or manipulation, for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals.

(d) Instructs, demonstrates, or solicits, by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals.

(e) Performs a manual or laboratory procedure for the diagnosis of pregnancy, sterility, or infertility on livestock for remuneration or hire.

(f) Performs acupuncture or ova or embryo transfer on animals.

(g) Instructs others except those covered under the provisions of section 66-2211, subsection (7) for compensation in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) A person may not practice veterinary medicine or veterinary surgery in this state unless licensed, and registered as required by this chapter; nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R. C. M. 1921; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975.

Amendments

The 1974 amendment deleted "by the state board of veterinary medical examiners" after "licensed" in subsection (2); and made minor changes in phraseology, punctuation and style.

The 1975 amendment added subdivisions (1)(f) and (1)(g).

66-2210. (3226) Veterinary medicine—denial, suspension, and revocation of license and certificate. (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or refuse to grant a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) fraud or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to Title 66, chapter 40;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to Title 66, chapter 40, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine;

(f) gross malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this act or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any cause, unless the person accused has been given notice and a public hearing by the board.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R. C. M. 1921; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977.

Amendments

The 1974 amendment substituted "board" for "state board of veterinary medical examiners" in the first sentence of subsection (1) and in subdivision (1) (j); deleted a final paragraph relating to the

procedure for hearings; and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted "with respect to the practice of veterinary medicine" in the preliminary clause of subsection (1); inserted "subject to Title 66, chapter 40" in subdivisions (c) and (d); and made minor changes in phraseology, punctuation and style.

66-2211. (3227) Interpretation of statute—persons not embraced within provisions. This chapter does not apply to:

(1) Veterinarians in the performance of their official duties, either civil or military, in the service of the United States, unless they engage in the practice of veterinary medicine in a private capacity.

(2) Laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state, or the United States, and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university or the United States.

(3) Lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation.

(4) A veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state, but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state.

(5) The employment of veterinary medical students who have successfully completed three (3) years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees as assistants to veterinarians licensed and registered under this chapter. However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of six (6) months from the date of completion of the third year of study.

(6) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(7) This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees employed in the conduct of his business, or by other persons whose services are rendered gratuitously in case of emergency.

(8) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R. C. M. 1921; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975.

Amendments

The 1974 amendment substituted "board of livestock" for "Montana livestock sanitary board" in subsection (2); substituted "Montana state university" for "Montana

state college" in subsection (2); substituted "cattle, sheep, horses, swine and related species" in subsection (6) for "large animals"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment deleted "spaying" before "castrating" in subdivision (6); deleted "and related species" after "swine" in subsection (6); and deleted "regularly" before "employed" in subdivision (7).

66-2212. (3228) Practice in violation of law—penalties. A person practicing veterinary medicine or veterinary technology within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine or veterinary technology in this state and upon conviction shall be punished by a fine of not less than \$200 or more than \$500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977.

Amendments

The 1977 amendment substituted "vet-

erinary technology" for "farriery" near the beginning of the section; inserted "or veterinary technology" near the middle of the section; and made minor changes in phraseology, punctuation and style.

66-2213. Veterinary technicians—definitions—examinations. (1) The board of veterinarians may also issue to qualified applicants licenses for the practice of veterinary technology, to be known as veterinary technicians.

(2) As used in this act:

(a) "Veterinary technician" means a person determined by the board to be qualified by education and training to provide limited veterinary services under the direct supervision of a licensed veterinarian who shall be responsible for the performance of that technician; provided, however, that nothing in this act permits the board or any licensed veterinarian to delegate any of the following duties or functions:

- (i) diagnosis;
- (ii) prognosis;
- (iii) prescription; or
- (iv) surgery.

(b) "Direct supervision" means an order by the supervising licensed veterinarian to the veterinary technician, with notice to the client, to perform a specific function for that client within the veterinarian's routine practice, with a follow-up by the veterinarian to evaluate and determine

the quality and effectiveness of the function performed and with all billing for such services to be made by the veterinarian.

(3) Each candidate for examination as a veterinary technician shall file in his full name an application for examination with the board at least thirty (30) days before the date set by the board for the commencement of the examination and at the time of making the application shall pay the board a fee of twenty-five dollars (\$25). The applicant shall furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of veterinary technology offering a course of study recognized and approved by the board of veterinarians, as well as such other information as may be required by the board.

(4) The board shall adopt uniform rules within the limitations of this act, governing the matter of examinations for license to practice veterinary technology in the state of Montana, which examinations shall be open to any applicant meeting the requirements of this act, and shall also provide in such rules for giving reasonable notice of the time and place where examinations shall be held.

(5) A person who can produce satisfactory evidence that he has been employed as a veterinary technician in the office of a regularly licensed veterinarian in the state of Montana for two (2) or more years prior to the passage of this act, may, upon payment of a fee of twenty-five dollars (\$25), be granted a certificate to practice by the board of veterinarians; provided that if the board in its discretion finds that animal health and the public interest so require, the board may require the applicant to pass a practical examination in veterinary technology. A certificate must be secured before such person may continue practice as a veterinary technician.

(6) Each applicant who passes the examination prescribed by the board shall be granted a license as a veterinary technician and shall be registered as such in a record kept by the board, and shall receive a certificate in a form to be prescribed by the board.

(7) A licensed veterinary technician may practice in the office of and under the direct supervision of a legally licensed and actively practicing veterinarian or in a department of state government in which a legally licensed veterinarian is present to exercise direct supervision.

(8) Each licensed veterinary technician shall annually, on or before July 1, procure from the board a certificate of annual registration. The fee for annual registration shall be fixed by the board, not exceeding the sum of ten dollars (\$10). Failure of a licensee to procure a certificate of registration on or before July 1 shall constitute a forfeiture of the license.

(9) Each licensed veterinary technician shall keep the board informed of his address, the name and address of the licensed veterinarian or of the state department which is his employer, and such other information as the board may by rule require.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975.

Title of Act

An act to authorize the practice of veterinary technology; to increase the number of members on the board of veterinarians from five (5) to six (6) by

amending sections 82A-1602.24 and 66-2202, R. C. M. 1947; to provide for continuing education and increase the license fee by amending section 66-2207, R. C. M. 1947; and to change the definition of veterinary medicine by amending sections 66-2209 and 66-2211, R. C. M. 1947.

66-2214. Veterinary technology—denial, suspension, and revocation of licenses or certificates. The board may, with respect to the practice of veterinary technology, deny or suspend or revoke any license or certificate of registration upon the grounds that the applicant or veterinary technician is guilty of:

- (1) soliciting patients for any practitioner of the healing arts;
- (2) soliciting or receiving any form of compensation from any person other than his registered employer for performing as a veterinary technician;
- (3) willfully or negligently divulging a professional confidence or discussing a veterinarian's diagnosis or treatment without the express permission of the veterinarian;
- (4) any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, is conclusive evidence, provided that at the conclusion of state supervision imposed as a consequence of such conviction the board may not consider the conviction upon reapplication for a license or certificate.
- (5) the habitual or excessive use of intoxicants or drugs;
- (6) fraud or misrepresentation in applying for or procuring a certificate of qualification to perform as a veterinary technician or in applying for or procuring an annual registration;
- (7) impersonating another person registered as a veterinary technician or allowing any person to use his certificate of qualification or registration;
- (8) aiding or abetting the practice of veterinary medicine by a person not licensed by the board;
- (9) gross negligence in the performance of duties, tasks, or functions assigned to him by a licensed veterinarian; or
- (10) manifest incapacity or incompetence to perform as a veterinary technician.

History: En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977.

Amendments

The 1977 amendment inserted "with re-

spect to the practice of veterinary technology" near the beginning of the section; and made minor changes in phraseology and punctuation.

66-2215. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine or veterinary technology, unless otherwise exempted under section 66-2211, subsection (7). If the court finds that the defendant is violating, or threatening to violate, any provision of Title 66, chapter 22, R. C. M. 1947, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 66, chapter 22, R. C. M. 1947.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975.

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section

- 66-2350. Definitions.
- 66-2351. Board—compensation and expenses.
- 66-2352. Board—organization—meetings.
- 66-2354. Receipts and disbursements—assistants.**
- 66-2355. Records and reports—register.**
- 66-2356. Roster.
- 66-2357. Requirements for registration.
- 66-2358. Application for registration—fees.
- 66-2359. Examinations.
- 66-2360. Certificates of registration—seal.
- 66-2361. Expiration and renewals—fee.
- 66-2362. Persons presently registered as professional engineer and/or land surveyor.
- 66-2363. Public works.
- 66-2365. Revocation of registration—hearings—reissuance of certificate.
- 66-2366. Violations—penalties—enforcement.**
- 66-2367. Exemption clause.
- 66-2368. Issuance of temporary permits.
- 66-2369. Interpretation of practice of engineering and practice of land surveying.

66-2324. [Transferred.]

Compiler's Notes

Section 3, Ch. 366, Laws of 1975, renumbered this section as sec. 66-2349.

66-2325. Repealed.

Repeal

Section 66-2325 (Sec. 2, Ch. 150, L. 1957), relating to the short title of the

act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2326. Repealed.

Repeal

Section 66-2326 (Sec. 3, Ch. 150, L. 1957; Sec. 1, Ch. 282, L. 1969; Sec. 1, Ch. 364, L. 1971; Sec. 214, Ch. 350, L. 1974), defining

terms for the Montana Professional Engineers' Registration Act, was repealed by Sec. 18, Ch. 366, Laws of 1975.

66-2327. [Transferred.]

Compiler's Notes

Section 215, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.11.

66-2328. Repealed.

Repeal

Section 66-2328 (Sec. 5, Ch. 150, L. 1957), relating to the qualifications for the members of the state board of regis-

tration for professional engineers and land surveyors, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2329. [Transferred.]

Compiler's Notes

Section 3, Ch. 366, Laws of 1975, renumbered this section as sec. 66-2351.

66-2330. Repealed.

Repeal

Section 66-2330 (Sec. 7, Ch. 150, L. 1957), relating to removal of board mem-

bers and vacancies on the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2331 to 66-2335. [Transferred.]**Compiler's Notes**

Section 3, Ch. 366, Laws of 1975, renun-

bered these sections as secs. 66-2352 to 66-2356.

66-2336. Repealed.**Repeal**

Section 66-2336 (Sec. 12, Ch. 150, L. 1957; Sec. 218, Ch. 350, L. 1974), relating

to registration requirements for professional engineers and surveyors, was repealed by Sec. 18, Ch. 366, Laws of 1975.

66-2337. [Transferred.]**Compiler's Notes**

Section 6; Ch. 366, Laws of 1975, renumbered this section as sec. 66-2358.

66-2338, 66-2339. Repealed.**Repeal**

Sections 66-2338 and 66-2339 (Secs. 15, 16, Ch. 150, L. 1957; Sec. 6, Ch. 282, L. 1969; Secs. 220, 221, Ch. 350, L. 1974), re-

lating to examinations, certificates of registration and seals for registered professional engineers, were repealed by Sec. 18, Ch. 366, Laws of 1975.

66-2340, 66-2341. [Transferred.]**Compiler's Notes**

Sections 9 and 10, Ch. 366, Laws of

1975, renumbered these sections as secs. 66-2361 and 66-2362.

66-2342. Repealed.**Repeal**

Section 66-2342 (Sec. 19, Ch. 150, L. 1957), relating to issuing certificates to professional engineers in practice on the

effective date of the original act and persons in the military, was repealed by Sec. 363, Ch. 350, Laws of 1974 and by Sec. 18, Ch. 366, Laws of 1975.

66-2343. Repealed.**Repeal**

Section 66-2343 (Sec. 20, Ch. 150, L. 1957), relating to the signature of a reg-

istered engineer on plans for public works was repealed by Sec. 18, Ch. 366, Laws of 1975.

66-2344. [Transferred.]**Compiler's Notes**

Section 12, Ch. 366, Laws of 1975, renumbered this section as sec. 66-2364.

66-2345. Repealed.**Repeal**

Section 66-2345 (Sec. 22, Ch. 150, L. 1957; Sec. 9, Ch. 282, L. 1969; Sec. 224, Ch. 350, L. 1974), relating to revocation

of registration of a professional engineer or land surveyor, was repealed by Sec. 18, Ch. 366, Laws of 1975.

66-2346. [Transferred.]**Compiler's Notes**

Section 14, Ch. 366, Laws of 1975, renumbered this section as sec. 66-2366.

66-2347. Repealed.**Repeal**

Section 66-2347 (Sec. 24, Ch. 150, L. 1957; Sec. 10, Ch. 282, L. 1969; Sec. 226, Ch. 350, L. 1974), relating to the scope of

applicability of the Montana Professional Engineers' Registration Act, was repealed by Sec. 18, Ch. 366, Laws of 1975.

66-2349. [Transferred from 66-2324.]**Compiler's Notes**

This section was originally numbered 66-2324. Section 18, Ch. 366, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here, but may be found in the parent volume as sec. 66-2324.

66-2350. Definitions. As used in this act:

(1) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences, and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been duly registered and licensed as a professional engineer by the board.

(2) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character, and has passed an examination in the fundamental engineering subjects, as provided in this act.

(3) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic or thermal nature, in so far as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this act, who practices any branch of the profession of engineering, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title, implies that he is a professional engineer, or that he is registered under this act, or who holds himself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric power lines or pipelines.

(4) "Land surveyor" means a person who (a) has been duly registered and licensed as a land surveyor by the board and (b) is a professional specialist in the technique of measuring land, educated in the basic principles of mathematics, related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisite to the surveying of real property and engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this act.

(6) "Practice of land surveying" means any service or work, the adequate performance of which requires the application of knowledge of the principles of mathematics, physical sciences, applied sciences and

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, and elevations;

(d) location of natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(7) "Board" means the board of professional engineers and land surveyors.

(8) "Department" means the department of professional and occupational licensing.

(9) "Responsible charge" means direct control and personal supervision, either of engineering work or of land surveying, as the case may be. Only professional engineers or land surveyors may legally assume responsible charge under this act.

History: En. 66-2350 by Sec. 2, Ch. 366, L. 1975.

Title of Act

An act to generally revise and update laws relating to professional engineers and land surveyors; amending sections 66-2335, 66-2341, and 82A-1602.11, R. C. M.

1947; renumbering sections 66-2324, 66-2329, 66-2331, 66-2332, 66-2333, 66-2334, 66-2335, 66-2337, 66-2340, 66-2341, 66-2344, and 66-2346, R. C. M. 1947; and repealing sections 66-2326, 66-2336, 66-2338, 66-2339, 66-2342, 66-2343, 66-2345, and 66-2347, R. C. M. 1947.

66-2351. Board — compensation and expenses. Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed twenty-five dollars (\$25) per day. In addition thereto, each member shall be reimbursed for travel expenses as provided for in sec-

tions 59-538, 59-539, and 59-801, involved in carrying out the provisions of this act.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R. C. M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975.

Amendments

The 1975 amendment substituted "travel

expenses as provided for in sections 59-538, 59-539, and 59-801, involved" for "all actual traveling, incidental, and clerical expenses necessarily incurred"; and made minor changes in style.

66-2352. Board—organization—meetings. The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide. The board shall elect annually the following officers: A chairman, a vice-chairman, and a secretary. A quorum of the board shall consist of not less than four members.

History: En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977.

Amendments

The 1977 amendment deleted "shall hold a meeting within thirty days after its

members are first appointed, and thereafter" after "The board" at the beginning of the first sentence; deleted "and regulations" after "rules" in each the second and third sentences; and increased the number of members for a quorum from three to four.

66-2353. [Transferred from 66-2332.]

Compiler's Notes

This section was originally numbered 66-2332. Section 3, Ch. 366, Laws of 1975, renumbered it to appear here. Because

there has been no change in text, the section is not reprinted here, but may be found in the parent volume as sec. 66-2332.

66-2354. Receipts and disbursements—assistants. The department shall collect all moneys under this act, and shall deposit these moneys in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R. C. M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975.

Amendments

The 1974 amendment rewrote this section. For prior version, see sec. 66-2333 in the parent volume.

66-2355. Records and reports—register. (1) The department shall keep a record of its proceedings and a register of the board's proceedings and a register of applicants for registration, which shall show (a) the name, age, and residence of each applicant; (b) the date of the application; (c) the place of business of the applicant; (d) his educational and other qualifications; (e) the branch or branches of engineering in which the applicant qualified; (f) whether an examination was required; (g) whether the applicant was rejected; (h) whether a certificate of registration was granted; (i) the date of the action of the board; and (j) other information considered necessary by the board.

(2) The records of the department are prima facie evidence of the proceedings of the board and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R. C. M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975.

Amendments

The 1974 amendment substituted "department" for "board" at the beginning

of subsections (1) and (2); substituted "department" for "secretary of the board under seal" before "is admissible" in subsection (2); deleted a third subsection relating to the board reporting under section 82-4002; and made minor changes in phraseology. For prior version, see sec. 66-2334 in the parent volume.

66-2356. Roster. A roster showing the names and addresses of registered professional engineers and registered land surveyors shall be published by the department during the month of April each year. Copies of this roster shall be mailed to each person registered. Copies shall also be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to the public on request at a fee established by the board.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R. C. M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977.

Amendments

The 1974 amendment substituted "department" for "secretary of the board"; and made minor changes in phraseology.

The 1975 amendment renumbered this section and substituted "names and addresses" for "names and places of business" in the first sentence.

The 1977 amendment added "at a fee established by the board" at the end of the section; and made minor changes in phraseology and punctuation.

66-2357. Requirements for registration. The requirements for engineering and land surveying registration are:

(1) **Engineering.** To be eligible for admission to examination for professional engineer or engineer-in-training, an applicant must be of good character and reputation and submit five (5) references with his application for registration as a professional engineer, three (3) references shall be professional engineers with personal knowledge of his engineering experience, or in the case of an application for certification as an engineer-in-training, by three (3) character references.

The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, or for certification as an engineer-in-training respectively.

(a) **As a professional engineer:**

(i) **Registration by endorsement.** A person holding a certificate of registration to engage in the practice of engineering, issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provision of the act and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may, upon application, be registered without further examination.

A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of engineering

examiners, whose qualifications meet the requirements of this act, may upon application, be registered without further examination.

(ii) Engineering—graduation—experience—examination. A graduate of an engineering curriculum of four (4) years or more approved by the board as being of satisfactory standing, and with a specific record of an additional four (4) years or more of progressive experience on engineering projects of a grade and character which indicates to the board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he is otherwise qualified.

(iii) Engineering-related graduation — experience — examination. A graduate of an engineering or related science curriculum of four (4) years or more, other than the ones approved by the board as being of satisfactory standing and with a specific record of eight (8) years or more of progressive experience on engineering projects of a grade and character which indicates to the board that the applicant may be competent to practice engineering, may be admitted to an eight-hour written examination in the fundamentals of engineering, and an eight-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he is otherwise qualified.

(iv) Long established practice. A graduate of an engineering or related science curriculum of four (4) years or more, with a specific record of twenty (20) years or more of progressive experience on engineering projects of which at least ten (10) years have been in charge of important engineering projects, and of a grade and character which indicates to the board that the applicant may be competent to practice engineering, shall be admitted to an eight-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he is otherwise qualified.

(v) Temporary qualifications. A specific record of eight (8) years or more experience in engineering work of a character satisfactory to the board, and successfully passing a written or written and oral examination designated to show that the applicant is competent to practice engineering. This requirement will automatically expire four (4) years from the effective date of this act.

(vi) Engineering teaching in a college or university offering an approved engineering curriculum of four (4) years or more, may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity.

(b) As an engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(i) Graduation and examination. A graduate of an engineering curriculum of four (4) years or more, approved by the board as being of satisfactory standing, shall be admitted to an eight-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(ii) Graduation—experience—examination. A graduate of an engineering or related science curriculum of four (4) years or more, other than the ones approved by the board as being satisfactory standing, and with a specific record of four (4) or more years of progressive experience on engineering projects of a grade and character, satisfactory to the board, shall be admitted to an eight-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training, if he is otherwise qualified.

(2) Land surveying. To be eligible for admission to examination for land surveyor or land surveyor-in-training, an applicant must be of good character and reputation and shall submit five (5) references with his application for registration as a land surveyor, three (3) of which references shall be registered land surveyors having personal knowledge of his land surveying experience; or in the case of an application for certification as a land surveyor-in-training, by three (3) references, one of whom shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical, and land surveying experience, exhibits of land surveying projects of which he has been in charge, recommendations by references, and a reviewing of these categories. An interview may be held at the board's discretion. Educational credit for institute courses, correspondence courses, etc., shall be determined by the board.

One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor, or for certification as a land surveyor-in-training, respectively:

(a) As a land surveyor:

(i) Graduation—experience—examination. Have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least four (4) years of combined office and field experience in land surveying with a minimum of three (3) years of experience in charge of land surveying projects under the supervision of a registered land surveyor and who has passed the examinations as required by the board.

(ii) Formal education—experience—examination. Two (2) years of formal education in an approved curriculum above high school level with at least ninety (90) quarter credit hours passed, or equivalent semester hours, or the equivalent approved by the board, and present evidence satisfactory to the board that in addition thereto, he has had at least six (6) years of combined office and field experience in land surveying with a minimum of four (4) years of experience in charge of land surveying projects under the

supervision of a registered land surveyor and who has passed the examinations as required by the board.

(iii) Registration by comity or endorsement. A person holding a certificate of registration to engage in the practice of land surveying issued or comparable qualifications from a state, territory, or possession of the United States, will be given comity consideration. However, he may be asked to take such examinations as the board deems necessary to determine his qualifications, but in any event, he shall be required to pass a written examination of not less than eight-hours duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

(iv) Temporary qualifications. A specific record of six (6) years or more experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written, or written and oral examination in land surveying prescribed by the board. This requirement will automatically expire two (2) years from the effective date of this act.

(b) As a land surveyor-in-training:

(i) Graduation—experience—examination. Have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that he has had, in addition thereto, at least two (2) years of combined office and field experience in land surveying with a minimum of one (1) year in charge of land surveying projects under the supervision of a land surveyor, and who has passed the written examinations required by the board.

(ii) Formal education—experience—examination. Have at least two (2) years of formal education in an approved curriculum above high school level with at least ninety (90) quarter credit hours passed, or equivalent semester hours or the equivalent approved by the board, and present evidence satisfactory to the board that in addition thereto, he has had at least four (4) years of combined office and field experience in land surveying with a minimum of two (2) years in charge of land surveying projects under the supervision of a land surveyor, and who has passed the written examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366,
L. 1975.

66-2358. Application for registration—fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is \$20, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is \$20 for those holding an engineer-in-training certificate validated for Mon-

tana. For those holding a valid engineer-in-training certificate from some other state, the application fee is \$30, which includes cost of transfer of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, payment of an additional fee equal to the existing yearly renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on application and payment of a fee of \$40, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country, if the applicant's qualifications meet the requirements of this act and the rules of the board.

(5) The fee for land surveyor-in-training is \$20, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a land surveyor is \$20 for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is \$30, which includes cost of transfer of the certification. No additional fee is required for issuance of a certificate. Upon approval of application for registration as a land surveyor, payment of an additional fee equal to the existing yearly renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is \$40 for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is \$60. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, payment of an additional fee equal to the existing yearly renewal fee must be paid before issuance of certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

(9) No registration or license fee or tax may be imposed by a municipality or by any other political subdivision of the state on a person registered under this act.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R. C. M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 101 and once by Ch. 317. Since the amendments do not appear

to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment increased all the fees prescribed by this section.

The 1974 amendment substituted "prescribed by the board and furnished by the department" in subsection (1) for "prescribed and furnished by the board"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment increased the registration fees in subsection (2) from \$35 to \$50; increased the portion accompanying the application from \$20 to \$30; increased the portion to be paid on issuance of certificate from \$15 to \$20; increased the fee for qualification by certificate from \$20 to \$30; increased the fee in subsection (3) for engineer-in-training from \$5.00 to \$10; increased the fee for issuance of certificate from \$15 to \$25; increased the registration fee for land surveyors in subsection (4) from \$35 to \$50; increased the fee for registration as professional engineer and land surveyor from \$50 to \$70; increased the portion to accompany the application from \$35 to \$50; and increased the portion to be paid on issuance of the certificate from \$15 to \$20.

Chapter 101, Laws of 1977, substituted "committee on national engineering certification of the national council of engineering examiners" for "national bureau of engineering registration"; and made minor changes in phraseology and style.

Chapter 317, Laws of 1977, rewrote subsections (2) through (5) which read: "(2) The registration fee for professional engineers is fifty dollars (\$50), thirty dollars (\$30) of which shall accompany application, the remaining twenty dollars (\$20) to be paid on issuance of a certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evi-

dence of qualification, the total fee for registration as professional engineer is thirty dollars (\$30).

"(3) The fee for engineer-in-training is twenty dollars (\$20), which shall accompany the application and shall include the cost of examination and issuance of a certificate. When certification as an engineer-in-training by another state, or a territory or possession of the United States or country, is accepted as evidence of qualification, the fee for engineer-in-training is ten dollars (\$10). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of twenty-five dollars (\$25) shall be paid before issuance of a certificate as a professional engineer.

"(4) The registration fee for land surveyors is fifty dollars (\$50), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor is seventy dollars (\$70), fifty dollars (\$50) of which shall accompany the application, the remaining twenty dollars (\$20) to be paid on issuance of a certificate.

"(5) If the board denies issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee"; and added subsections (6) through (9).

Repealing Clause

Section 4 of Ch. 317, Laws 1977 read "Section 66-2364, R.C.M. 1947, is repealed."

66-2359. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in section 66-2357 and has been approved by the board for admission to the examinations as follows:

(a) Engineering fundamentals. Consists of an eight-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate, provided he has met all other requirements for certification required by this act.

(b) Principles—practice of engineering. Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer, provided he has met the other requirements for registration required by this act.

(c) Land surveyor-in-training. Consists of two (2) four-hour examinations designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate, provided he has met all other requirements for certificates required by this act.

(d) Land surveyor. Consists of being a land surveyor-in-training and of two (2) four-hour examinations designated as parts III and IV, on the

applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration as a land surveyor, provided he has met the other requirements for registration required by this act.

(3) A candidate failing one examination may apply for re-examination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify.

History: En. 66-2359 by Sec. 7, Ch. 366,
L. 1975.

66-2360. Certificates of registration—seal. (1) The department shall issue to any applicant, who, in the opinion of the board, has met the requirements of this act, a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation “professional engineer,” and for a land surveyor, “land surveyor.” It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or land surveyor, while the said certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant’s name, serial number, and the legend, “professional engineer” and/or “land surveyor.” Plans, specifications, plats, and reports prepared by a registrant shall, when issued, be certified, signed, and stamped with the said seal or facsimile thereof. It shall be unlawful for a registrant to affix or permit his seal and signature or facsimile thereof to be affixed to any plans, specifications, plats, or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this act.

(4) The department shall issue to any applicant, who, in the opinion of the board, has met the requirements of this act, an enrollment card as engineer-in-training or land surveyor-in-training, which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or land surveyor.

History: En. 66-2360 by Sec. 8, Ch. 366,
L. 1975.

66-2361. Expiration and renewals—fee. Certificates of registration expire on December 31 and become invalid on that date unless renewed. The department shall notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee required for its renewal for one (1) year. This notice shall be mailed at least one (1) month in advance of the date of the expiration of the certificate. Re-

renewal may be made during the month of December by the payment of a fee not to exceed twenty dollars (\$20) as set by the board for either a professional engineer or land surveyor or both. Failure on the part of a registrant to renew his certificate annually in the month of December does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for two (2) consecutive years shall be considered a new applicant and is required to submit a new application.

History: En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R. C. M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975.

Amendments

The 1974 amendment deleted a clause from the first sentence relating to expiration of certificates issued prior to January

1, 1958; substituted "department" for "secretary of the board" in the second sentence; and made minor changes in phraseology, punctuation and style. For prior version, see sec. 66-2340 in the parent volume.

The 1975 amendment substituted "fee not to exceed twenty dollars (\$20) as set by the board" for "fee of ten dollars (\$10)."

66-2362. Persons presently registered as professional engineer and/or land surveyor. No person who heretofore has been duly registered as a professional engineer and/or land surveyor under the laws of Montana and whose registration has not been revoked shall be required to register again under this act, and his former registration shall be fully recognized under the provisions of this act. All certificates including those for engineer-in-training heretofore issued and not revoked shall have the same force and effect as if they had been issued under the provisions of this act, and shall be subject to the same rules, terms and conditions as are the certificates provided for in this act.

History: En. Sec. 18, Ch. 150, L. 1957; Sec. 66-2341, R. C. M. 1947; amd. and redes. 66-2362 by Sec. 10, Ch. 366, L. 1975.

Amendments

The 1975 amendment renumbered this section; substituted "professional engineer" for "civil engineer"; and made a minor change in punctuation.

66-2363. Public works. This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities, or officials or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer for engineering projects, or land surveyor for all land surveying projects, as provided for the practice of the respective professions by this act.

This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities, or officials or employees thereof shall not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, waste water disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the land surveyor for land surveying projects, or licensed architect for architectural

projects, as provided for the practice of the respective professions by this act.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975.

66-2364. Repealed.

Repeal

Section 66-2364 (Sec. 21, Ch. 150, L. 1957; Sec. 8, Ch. 282, L. 1969; Sec. 3, Ch. 364, L. 1971; Sec. 223, Ch. 350, L. 1974; Sec. 9, Ch. 215, L. 1975; Sec. 12, Ch. 366, L. 1975), relating to registration of engineers registered outside the state, was repealed by Sec. 4, Ch. 317, Laws 1977.

66-2365. Revocation of registration—hearings—reissuance of certificate. (1) The board may revoke, reprimand, suspend, or refuse to renew the certificate of a registrant found guilty of:

- (a) Fraud or deceit in obtaining a certificate of registration.
- (b) Gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor.
- (c) A felony.
- (d) Violation of rules for professional conduct for professional engineers and land surveyors adopted by the board.
- (e) If a land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, and subscribed and sworn to by the person making them, and filed with the department. Charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they were made.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to revoke, reprimand, suspend, or refuse to renew.

(4) If, after hearing, four (4) or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or land surveyor.

The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if four (4) or more members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975.

66-2366. Violations—penalties—enforcement. (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this act, or a person presenting or attempting to use as his own the certificate of registration or the seal of another, or a person who gives false or forged evidence to the board or department in obtaining

a certificate of registration, or a person who falsely impersonates another registrant, or a person who attempts to use an expired or revoked certificate of registration, or a person who violates this act, is guilty of a misdemeanor, and shall, on conviction, be fined not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500), or imprisoned for a period not exceeding three (3) months, or both.

(2) All officers of the law of this state, or a political subdivision thereof, shall enforce this act and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R. C. M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975.

Amendments

The 1974 amendment deleted "or any

member thereof" after "board" near the middle of subsection (1) and inserted "or department"; substituted "this chapter" for "this act" at the end of subsection (2); and made minor changes in phraseology, punctuation and style.

66-2367. Exemption clause. The following are exempt from coverage under this act:

(1) The practice of any other legally recognized professions or trades.
 (2) The mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent.

(3) Employees and subordinates. The work of an employee or a subordinate of a person holding a certificate of registration under this act, or an employee of a person practicing lawfully under this act; provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this act or a person practicing lawfully under this act.

(4) The practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture.

(5) The practice of professional engineering or land surveying in this state by a firm, copartnership, corporation, or joint stock association or by its members, officers, or employees on its behalf, if each person personally supervising and in direct charge of all activities of the firm, copartnership, corporation, or joint-stock association which constitutes the practice, is a professional engineer or land surveyor holding a certificate of registration under this act.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975.

66-2368. Issuance of temporary permits. Temporary permits are governed by the following:

(1) Professional engineer. The practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined

in this act. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, they may be granted a written permit for a definite period of time not to exceed one (1) year to do a specific job, provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in said permit.

(2) Land surveyor. The practice of land surveying under a temporary permit by a person registered as a land surveyor in another state is not considered to be in the best interests of the public and, therefore, shall not be granted.

History: En. 66-2368 by Sec. 16, Ch. 366, L. 1975.

66-2369. Interpretation of practice of engineering and practice of land surveying. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this act, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer or that he is registered under this act; or who holds himself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying within the meaning and intent of this act, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a land surveyor, or through the use of some other title implies that he is a land surveyor, or who represents himself as able to perform, or who does perform any land surveying service or work, or any other service designated by the practitioner which is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975. "Sections 66-2326, 66-2336, 66-2338, 66-2339, 66-2342, 66-2343, 66-2345, and 66-2347, R. C. M. 1947, are repealed."

Repealing Clause

Section 18 of Ch. 366, Laws 1975 read

CHAPTER 24—PLUMBERS

- Section
 66-2401. Plumbers—license required—exception.
 66-2401.1. Definitions.
 66-2402. Application for state license—qualifications of licensees.
 66-2403. Compensation—examination of applicants.
 66-2404. Application for license—information required—individual—firms or corporations.
 66-2405. Examination fee—expiration of license—annual renewal—fees.
 66-2406. Apprentices—rules—record.
 66-2407. Disposition of license fees.
 66-2409. Quorum of board—rules.
 66-2411. Penalty for violations—exceptions from chapter.
 66-2414. Rules of board—chairman.
 66-2415. Act not to impose penalties on hiring of unlicensed plumbers.
 66-2416. Minimum standards.

- 66-2417. District court—jurisdiction—restraining orders.
 66-2419. Revocation or suspension of license for work below minimum standards.
 66-2420. Revocation or suspension—initiation of proceedings—procedure.
 66-2422. Hearing on revocation or suspension of license—procedure.
 66-2426. Exceptions from act.
 66-2427. Permit fee—payment—penalties.

66-2401. Plumbers—license required—exception. (1) Any person working at the field of plumbing, in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who, while working at the field of plumbing, shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system, shall first secure a state license as hereinafter provided. Provided that the council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may, by ordinance, rule or resolution duly adopted, and upon reasonable notice to the board of plumbers and upon their approval, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available.

(2) Licensure is not required in the following instances of plumbing installation:

(a) Where an owner of a single family residence used exclusively for his personal use, makes the installation himself for all sanitary plumbing and potable water supply piping; or, where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) In any mine, mill, smelter, refinery, or railroad;

(c) In farms or ranches having their own private water supply and sewage disposal systems;

(d) In cities and towns extending their own city water and sewer mains;

(e) Installation of water conditioner services in private dwellings;

(f) Minor work by employees or agents of an appliance dealer, incidental to the installation of an appliance purchased from the dealer.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975.

Amendments

The 1975 amendment divided the section into subsections; substituted "field of plumbing" for "business of plumbing" throughout the section; inserted "or in any other area served by a public water supply or a public sewer system" in the first

sentence of subsection (1); inserted "or board of directors or managers of a water or sewer district or water utility" in the second sentence of subsection (1); inserted "rule or resolution" after "by ordinance" in the second sentence of subsection (1); inserted "and upon their approval" before "authorize" in the second sentence of subsection (1); added subsection (2); and made minor changes in phraseology, punctuation and style.

66-2401.1. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of plumbers, provided for in section 82A-1602.22;

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16;

(3) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves ten (10) or more families, or twenty-five (25) or more persons on a regular and continuous basis;

(4) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings, or any other facility that serves the public;

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto;

(6) "Master plumber" means a person who is authorized by this act to plan, estimate, bid, contract for, and supervise plumbing work; and

(7) "Field of plumbing" means the business, trade or work having to do with the installation, removal, alteration or repair of plumbing and drainage systems or parts thereof.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975.

Amendments

The 1975 amendment added subdivisions (3) through (7); and made minor changes in phraseology and punctuation.

66-2402. Application for state license—qualifications of licensees. (1) A person desiring to work at the business of plumbing in Montana shall file his application for a license with the department and shall at the time and place designated by the board be examined as to his qualifications for working in this business.

(2) The following requirements shall be met by applicants for a journeyman plumber's license:

(a) a specific record of 4 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 4 years in a major phase of the plumbing business or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 82A-1603(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(3) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

(4) The following requirements shall be met by an applicant for a master plumbers' license:

(a) evidence of 4 years' experience as a journeyman plumber in the field of plumbing of a character satisfactory to the board;

(b) evidence of 3 years' experience in supervisory capacities in the field of plumbing, which may run concurrently with the requirement in subsection (4) (a);

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(5) A master plumber is not authorized to perform the work of a journeyman plumber unless he is also licensed as a journeyman plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977.

Amendments

The 1974 amendment substituted "department" for "secretary of the board of plumbing examiners" in subsection (1); substituted "department of labor and industry" for "Montana state apprenticeship council" in subdivision (2) (a) (i); substituted "department, subject to section 82A-1603(4)" for "board" in subdivision (2) (a) (ii); and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "in the state of Montana" for "in a city or town" in subsection (1); reduced experience requirement for journeymen plumbers from five years to four years; inserted "accredited" before "trade or other schools" in subdivision (2) (a) (i); deleted "general" before "knowledge" in subdivision (2) (a) (ii); added item (iii) to subdivision (2) (a); reduced the experience requirement for master plumbers from five years to four years; added "in the field of plumbing of a character satis-

factory to the board" at the end of subdivision (2) (b) (i); added "which may run concurrently with the requirement in (i) above" in subdivision (2) (b) (ii); added subdivision (2) (b) (iv); and made minor changes in phraseology, punctuation and style.

The 1977 amendment combined the former preliminary clauses of subsection (2) and subdivision (2) (a); redesignated former subdivisions (2) (a) (i) and (2) (a) (ii) as subdivisions (2) (a) and (2) (b); redesignated former subdivision (2) (a) (iii) as subsection (3); substituted the preliminary clause of subsection (4) for a former subdivision (2) (b) reading "For master plumbers"; redesignated former subdivisions (2) (b) (i) to (2) (b) (iii) as subdivisions (4) (a) to (4) (c); redesignated former subdivision (2) (b) (iv) as subsection (5); inserted "plumbers registered with the state department of labor and industry" in the second sentence of subsection (5); deleted "in the conduct of his business" at the end of the second sentence of subsection (5); and made minor changes in phraseology, punctuation and style.

66-2403. Compensation—examination of applicants. (1) A member of the board is entitled to compensation in the amount of twenty dollars (\$20) plus per diem for each day while actually engaged in the work of the board and reimbursement for travel expenses as provided for in sections 59-538, 59-539, and 59-801.

(2) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to section 82A-1603 (4). The department shall examine each applicant for a license, to determine his skill and qualifications as a master plumber or journeyman

plumber. The applicant upon successfully passing the examination prescribed by the board, then shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 439 and once by Ch. 497. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment deleted a portion of subsection (1) and a final paragraph of the section relating to the creation of the former board of plumbing examiners; deleted from subsection (1) a clause providing that board members be paid only from revenue realized under the act; sub-

stituted "department" for "board of examiners of plumbers" and "board" in subsection (2); inserted "subject to section 82A-1603(4)" in the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 439, Laws of 1975, added "and reimbursement for travel expenses as provided for in sections 59-538, 59-539, and 59-801" at the end of subsection (1).

Chapter 497, Laws of 1975, inserted "plus" before "per diem" in the first sentence of subsection (1); substituted "in the field of plumbing" for "at the business of plumbing" throughout the section; substituted "skill and qualifications as a master plumber or journeyman plumber" for "qualifications and fitness for carrying on the business of a master plumber or journeyman plumber" in the second sentence of subsection (2); deleted a final sentence which authorized a licensee to carry on plumbing business in any city or town in this state; and made minor changes in phraseology.

66-2404. Application for license—information required—individual—firms or corporations. A person, firm, or corporation desiring to engage in or work in the field of plumbing, either as a master plumber or as a journeyman plumber, in this state, shall make application to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience, and shall at a time and place designated by the board be examined as to his qualifications for a license. In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm, or to a principal of the firm or corporation, satisfies the requirements of this act as to master plumbers, but not as to journeymen plumbers. No individual, firm or corporation may do the work of a master plumber unless licensed under this act.

A master plumber shall not allow his license to be used by any person, or firm, corporation, or business other than his own, for the purpose of obtaining permits, or for doing plumbing work under his license.

History: En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975.

Amendments

The 1974 amendment substituted "department" for "secretary of said board of plumbing examiners" in the first sentence; and made minor changes in phraseology, punctuation and style.

The 1975 amendment substituted "to a principal of the firm or corporation" for "to the manager of the corporation" near the end of the first paragraph; substituted "no individual, firm or corporation" for "a person" in the last sentence of the first paragraph; added the second paragraph; and made minor changes in phraseology.

66-2405. Examination fee—expiration of license—annual renewal—fees. No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department \$100 as an examination fee, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department \$50 as an examination fee. A license when issued expires 1 year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of not to exceed \$100 as set by the board for a renewal of a master plumber's license and not to exceed \$25 as set by the board for a journeyman plumber's license, and renewal is also for the period of 1 year.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977.

Amendments

The 1974 amendment substituted "board" for "board of plumbing examiners" throughout the section; substituted "department" for "secretary of the said board" and "board" throughout the section; and made minor changes in phraseology, punctuation and style.

The 1975 amendment increased the master plumber examination fee from \$50 to \$100; increased the journeyman plumber examination fee from \$25 to \$50; increased license renewal fees for master plumbers

from \$25 to "not to exceed one hundred dollars (\$100) as set by the board"; increased license renewal fees for journeyman plumbers from \$10 to "not to exceed twenty-five dollars (\$25) as set by the board"; and made minor changes in phraseology.

The 1977 amendment deleted the former last sentence which required a bond or \$5,000 cash deposit for a master plumber's license; and made minor changes in punctuation and style.

Repealing Clause

Section 4 of Ch. 541, Laws 1977 read "Sections 66-2113, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, and 66-3510, R.C.M. 1947, are repealed."

66-2406. Apprentices—rules—record. This act does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the state department of labor and industry will be recognized by the department. The name and residence of each apprentice, and the names and residences of their employers, shall be filed with the department, and a record shall be kept by the department.

History: En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975.

Compiler's Notes

The compiler has inserted the period at the end of the first sentence and has capitalized "Only" at the beginning of the second sentence, to correct apparent errors.

Amendments

The 1974 amendment substituted "board"

for "board of plumbing examiners" in the first sentence; substituted "department" for "board" throughout the section; and made minor changes in phraseology.

The 1975 amendment substituted "under the supervision of a licensed journeyman plumber" for "and under the rules made by the board" at the end of the first sentence; inserted the second sentence; deleted "showing the names and residences of these apprentices" at the end of the section; and made a minor change in punctuation.

66-2407. Disposition of license fees. Money paid for license fees under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "board of plumbing examiners"; added "subject to section 82A-1603(6)"; and made minor changes in phraseology.

66-2409. Quorum of board—rules. (1) A majority of the board constitutes a quorum.

(2) The board may adopt rules necessary to carry out this act.

History: En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974.

for "board of plumbing examiners"; and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "board"

66-2410. Repealed.

Repeal

Section 66-2410 (Sec. 10, Ch. 203, L. 1949), relating to issuing licenses to

plumbers in business on the effective date of the original act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2411. Penalty for violations—exceptions from chapter. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than \$10 and not more than \$100 for each separate offense. However, this chapter shall not be construed to apply to or affect plumbing or pipe-fitting as indicated in the 66-2401(2) and 66-2426 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977.

2401(2) and section 65-2426 exceptions" for "in any smelter, mine, railroad or manufacturing industry" at the end of the section; deleted from the end of the section "and that nothing herein shall be construed to affect article VI of the state of Montana plumbing code, rules and regulations"; and made minor changes in phraseology.

Amendments

The 1975 amendment substituted "field of plumbing" for "business of plumbing"; deleted "in any incorporated city or town in this state" after "a plumbing business" in the first sentence; substituted "public water or sewer system" for "water or sewer system of such city or town"; substituted "as indicated in the section 66-

The 1977 amendment substituted "chapter" for "act" throughout the section; and made minor changes in phraseology, punctuation and style.

66-2413. Repealed.

Repeal

Section 66-2413 (Sec. 2, Ch. 251, L. 1959), relating to making the board of

plumbing examiners the state plumbing board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2414. Rules of board—chairman. The board shall adopt rules for the transaction of its business and the department shall keep a record of the board's official actions. It shall annually select a chairman from its members.

History: En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "the de-

partment" before "shall keep a record"; deleted a sentence authorizing the board to employ a secretary; and made minor changes in phraseology.

66-2415. Act not to impose penalties on hiring of unlicensed plumbers.

This act shall not be construed as imposing any penalty on any person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who shall himself engage in the field of plumbing at a time when he is not duly licensed shall be subject to the penalties imposed by this act.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975.

Amendments

The 1975 amendment substituted the

present section for the former section which read "Nothing in this act shall be construed as requiring that licensed plumbers be employed in the performance of any plumbing work."

66-2416. Minimum standards. The department of administration shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 66-2426.

History: En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 236, Ch. 350, L. 1974; amd. Sec. 9, Ch. 497, L. 1975; amd. Sec. 5, Ch. 504, L. 1977.

Amendments

Chapter 226, Laws of 1974, substituted "department of administration" for "state building code council" in subsection (2).

Chapter 350, Laws of 1974, substituted "board" for "state plumbing board" in subsection (1); substituted "department of health and environmental sciences" for "state board of health" in subsection (1); substituted "department of administration" for "state building code council" in subsection (2); and made minor changes in phraseology, punctuation and style.

The 1975 amendment deleted "new" before "plumbing installations" in the first sentence of subsection (1); added "or maintenance, except where exempt by section 66-2426" to the end of the first sentence of subsection (1); deleted a second sentence in subsection (1) which read "The rules shall contain the minimum requirements for plumbing set forth in the American standard national plumbing code, numbered ASA A40.8-1955, and published by the American society of mechanical engineers"; deleted "Except as provided in subsection (2) of this section"

from the beginning of the second sentence of subsection (1); inserted "department of administration" near the beginning of the second sentence of subsection (1); substituted "an amount equal to the actual current cost of the code plus postage" for "a fee of no more than five dollars (\$5)" at the end of subsection (1); and made minor changes in phraseology.

The 1977 amendment substituted "department of administration" for "board" at the beginning of the section; deleted the second and third sentences of former subsection (1) which read "Upon approval of the department of administration, department of health and environmental sciences and the attorney general, and upon publication, the rules become the state plumbing code and have the force of law. A copy of the code shall be supplied to each person licensed under sections 66-2401 through 66-2411, or any other interested person, for an amount equal to the actual current cost of the code plus postage"; and deleted former subsection (2) reading "Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state"; and made a minor change in style.

66-2417. District court—jurisdiction—restraining orders. The district court of any county has jurisdiction in equity, on application of the department of administration, to restrain from connection any new plumbing

installations, on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code.

History: En. Sec. 6, Ch. 251, L. 1959; amd. Sec. 237, Ch. 350, L. 1974; amd. Sec. 6, Ch. 504, L. 1977.

Amendments

The 1974 amendment substituted "board" for "state plumbing board" and "department of health and environmental sci-

ences" for "state board of health"; and made minor changes in phraseology.

The 1977 amendment substituted "department of administration" for "board or the department of health and environmental sciences"; and deleted "enforce this act and to" before "restrain from connection any new plumbing."

66-2419. Revocation or suspension of license for work below minimum standards. Any person, firm, or corporation licensed under the provisions of Title 66, chapter 24 of the laws of the state of Montana who performs plumbing work in the field of plumbing, below the minimum basic standards for plumbing as set forth in said state plumbing code is subject to having their license revoked or suspended by the state board of plumbers.

History: En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975.

Amendments

The 1975 amendment substituted "in the field of plumbing" for "in any building

whatsoever" after "plumbing work"; substituted "is subject to having their license revoked" for "shall have their license revoked" at the end of the section; and substituted "board of plumbers" for "plumbing board."

66-2420. Revocation or suspension—initiation of proceedings—procedure. Proceedings for the revocation or suspension of a journeyman or master plumber's license may be taken by the board on its motion, for matters in its knowledge, or may be taken on the information of another. Accusations must be in writing, and verified by a party familiar with the facts charged. On receiving the accusation the board shall, if it considers the accusation sufficient, make an order setting it for hearing, and requiring the accused to appear and answer the charge or accusation at the hearing.

History: En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975.

Amendments

The 1974 amendment deleted a clause requiring the filing of three copies of the accusations with the secretary of the board; deleted a clause requiring the sec-

retary to send one such copy and a copy of the board's order to the accused ten days before the hearing; and made minor changes in phraseology.

The 1975 amendment inserted "journeyman or master" before "plumber's license" in the first sentence; and deleted "in the county in which the alleged violation occurred" at the end of the section.

66-2421. Repealed.

Repeal

Section 66-2421 (Sec. 10, Ch. 251, L. 1959), relating to service of process and

appearance of the accused, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2422. Hearing on revocation or suspension of license—procedure. If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge, or if on the hearing, the board finds the charge or accusation true, it may order either revoking the license of the accused or suspending it for a fixed period.

History: En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted two final

sentences relating to right to benefit of counsel and powers of the board to compel attendance of witnesses and hear evidence; and made minor changes in phraseology.

66-2423. Repealed.**Repeal**

Section 66-2423 (Sec. 12, Ch. 251, L. 1959), relating to judicial review of deci-

sions of the board, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2425. Repealed.**Repeal**

Section 66-2425 (Sec. 14, Ch. 251, L. 1959), relating to the effective date of the

state plumbing code, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2426. Exceptions from act. This act shall not be construed to apply to, or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975.

Amendments

The 1973 amendment inserted the exemption of installation of water conditioner services in private dwellings.

The 1975 amendment deleted installation of water conditioner services in private dwellings and plumbing installation in reduction works and manufacturing industries from the list of exceptions to the act; and added "railroads" to the list of exceptions.

66-2427. Permit fee—payment—penalties. (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the department of administration.

A separate permit shall be obtained for each building or structure.

No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(2) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 66-2426 or 66-2401. No state permit is required whenever the installation occurs in an area governed by a municipality and where there is in effect a municipal building code which covers plumbing installations and which provides inspection procedures. Nothing contained in this act shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act.

(3) Persons required by this section to apply for a permit shall make application on forms provided by the department of administration or authorized representative. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The department of administra-

tion or its authorized representative may require sketches, specifications or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

If the department of administration determines that the sketches, specifications, drawings, descriptions and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department of administration.

(4) Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of administration or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

The department of administration shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the earmarked revenue fund of the department of administration for use in the administration and enforcement of this act and the Montana state plumbing code.

(5) All plumbing and drainage systems may be inspected by the department of administration or their authorized representative to insure compliance with the requirements of the state plumbing code.

(6) It is the duty of the person doing work authorized by the permit to notify the department of administration orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

(7) Whenever any work is being done contrary to the provisions of the state plumbing code, the department of administration or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

(8) The department of administration may suspend or revoke a permit, whenever it is issued in error or on the basis of incorrect information supplied, or work performed thereunder is in violation of any of the provisions of Title 66, chapter 24.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 226 and once by Ch. 504. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "department" for "state plumbing board" in

the fourth sentence; substituted "department" for "state plumbing inspector" in the fifth sentence; and made minor changes in phraseology and style.

The 1975 amendment completely rewrote this section. For prior version, see parent volume and 1974 amendment note.

Chapter 226, Laws of 1977, inserted the third sentence of subsection (2); and made a minor change in style.

Chapter 504, Laws of 1977, substituted references to the department of administration for references to the board of plumbers throughout the section; and made minor changes in phraseology, punctuation and style.

CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

Section

- 66-2501. Definitions.
- 66-2502. Qualifications of applicants for license.
- 66-2503. Application for examination—examination fee.
- 66-2505. Applicants licensed in another state.
- 66-2506. Examination of applicants—scope.
- 66-2507. Issuance of license—certificate as evidence.
- 66-2508. Annual renewal of license.
- 66-2509. Refusal to issue or renew license—grounds.
- 66-2510. Temporary licenses.
- 66-2514. Rules adopted by board—records of proceedings and licensees.

66-2501. Definitions. Unless the context requires otherwise, in this act:

(1) "Physical therapy" means the treatment of a bodily or mental condition of a person by the use of the physical, chemical, and other properties of heat, light, water, electricity, massage, and therapeutic exercise including physical rehabilitation procedures. The use of roentgen rays and radium for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term "physical therapy" as used in the act.

(2) "Physical therapist" means a person who practices physical therapy.

(3) "Board" means the Montana state board of medical examiners, provided for in section 82A-1602.15.

(4) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted the definition of "board" in subdivision (3) for

"board of medical examiners"; substituted subdivision (4) for a subdivision reading "Words importing the masculine gender may be applied to females"; and made minor changes in punctuation and phraseology.

66-2502. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

- (1) be of good moral character;
- (2) have graduated from a school of physical therapy approved by the council of medical education and hospitals of the American medical association;
- (3) either:
 - (a) pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist; or
 - (b) be entitled to a license without examination under 66-2505.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977.

Amendments

The 1971 amendment deleted a former subdivision (1) reading "Be at least twenty-one years old"; and redesignated former subdivisions (2) to (4), inclusive, as subdivisions (1) to (3), inclusive.

The 1974 amendment deleted "from the board" near the beginning of the section after "for a license"; deleted "by it" in subdivision (3)(a) after "examination"; and made a minor change in phraseology.

The 1977 amendment deleted "or 66-2506" from the end of subdivision (3)(b); and made minor changes in phraseology, punctuation and style.

66-2503. Application for examination—examination fee. Unless entitled to a license under section 66-2505, a person who desires to be licensed as a physical therapist shall apply to the department, in writing, on a form furnished by the department. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the department at the time of filing his application a fee as established by the board by rule. Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). Anyone failing to pass the required examination is entitled to a second examination within six (6) months.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 227, and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 227, Laws of 1974, substituted

"as established by the board by rule" at the end of the third sentence; inserted "Said fee shall be commensurate with the cost of the examination and its administration and" at the beginning of the fourth sentence; and deleted "without additional fee" at the end of the section.

Chapter 350, Laws of 1974, substituted "department" throughout the section for "board" and "secretary of the board of medical examiners"; deleted "of medical examiners" after "board" in the next-to-last sentence and added "subject to section 82A-1603(6)"; and made minor changes in style and phraseology.

66-2504. Repealed.

Repeal

Section 66-2504 (Sec. 4, Ch. 39, L. 1961), relating to licensing of therapists before

September 30, 1961, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2505. Applicants licensed in another state. The board may, in its discretion, authorize the department to register as a physical therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory, if the requirements for a license for physical therapist in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974.

section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 227, and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

Amendments

Chapter 227, Laws of 1974, substituted "fee as established by the board" for "twenty-five dollars (\$25.00) fee."

Chapter 350, Laws of 1974, inserted "authorize the department to" near the beginning of the section before "register"; and made a minor change in style.

66-2506. Examination of applicants—scope. The department shall, subject to section 82A-1603, examine applicants for a license as physical therapists at times and places the board determines. The examinations shall embrace subjects the board considers necessary to determine the applicant's fitness.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974.

for "board"; inserted "subject to section 82A-1603" near the beginning of the section; deleted a second sentence reading "It shall appoint two registered physical therapists to aid it in such examinations"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "department" at the beginning of the section

66-2507. Issuance of license—certificate as evidence. The department shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this act. The department shall issue to each person licensed a license certificate, which is prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of this act.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974.

partment" throughout the section for references to "board"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

66-2508. Annual renewal of license. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee of five dollars (\$5). A license that is not renewed before April, every year, automatically lapses. The board may in its discretion revive and renew a lapsed license on the payment of all past unpaid renewal fees.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974.

partment" in the first sentence for "board"; substituted references to renewal for references to extension; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

66-2509. Refusal to issue or renew license—grounds. The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew the license of any licensed person:

(1) who is habitually intoxicated or who is addicted to the use of narcotic drugs;

(2) who has been convicted of violating any state or federal narcotic law, subject to Title 66, chapter 40;

(3) who is, in the judgment of the board, guilty of immoral or unprofessional conduct;

(4) who has been convicted of any crime involving moral turpitude, subject to Title 66, chapter 40;

(5) who is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) who has obtained or attempted to obtain registration by fraud or material misrepresentation;

(7) who has been declared to be seriously mentally ill by a court of competent jurisdiction and has not thereafter been released from treatment;

(8) who has treated or undertaken to treat ailments of human beings otherwise than by physical therapy or who has undertaken to practice physical therapy independent of prescription from a person who holds an unlimited license to practice medicine and surgery in Montana and other states and territories.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977.

and (4); substituted "to be seriously mentally ill" in subdivision (7) for "insane"; substituted "released from treatment" in subdivision (7) for "lawfully declared sane"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment added "subject to Title 66, chapter 40" to subdivisions (2)

66-2510. Temporary licenses. On payment to the department of a fee of ten dollars (\$10), and the submission of a written application on forms provided by it, the department shall issue without examination a temporary license to practice physical therapy in this state for a period not to exceed one (1) year to a person who meets the qualifications set forth in section 66-2502, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project. On the submission of a written application on forms provided by it, the department shall also issue a temporary license to a person who has applied for a license under this act and who is, in the judgment of the board, eligible to take the examination provided for in section 66-2502. This temporary license is available to an applicant only with respect to his first application for a license under section 66-2505 and the license

expires when the board makes a final determination with respect to the application.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" throughout the section for "board"; and made minor changes in style, punctuation and phraseology.

66-2514. Rules adopted by board—records of proceedings and licensees. (1) The board may adopt rules to carry this act into effect. (2) The department shall keep a record of the board's proceedings under this act and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last known place of business, last known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(3) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department, and payment of an amount not in excess of the cost of the list so furnished.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted "and may amend and revoke such rules at its discretion" at the end of subsection (1); sub-

stituted "department" throughout subsections (2) and (3) for "board"; inserted "and payment of an" in the last sentence of subsection (3) before "amount"; inserted the subsection designations; and made minor changes in punctuation and phraseology.

66-2517. Repealed.

Repeal

Section 66-2517 (Sec. 19, Ch. 39, L. 1961), relating to the short title of the

act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

Section

66-2602. Purpose of the act.

66-2602.1. Definitions.

66-2602.2. Exceptions.

66-2604. Board—seal—compensation.

66-2605. Powers and duties of the board.

66-2606. Water well contractor's licenses.

66-2607. License year.

66-2608. Examination and qualifications.

66-2609. Bond to be required.

66-2610. Revocation and suspension.

66-2601. Repealed.

Repeal

Section 66-2601 (Sec. 16, Ch. 39, L. 1961; Sec. 1, Ch. 232, L. 1974), the title

of the "Montana Water Well Contractor's License Act," was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2602. Purpose of the act. (1) It is the purpose of this act to reduce and minimize the waste of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells in this state and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is in the best interest of the public, and the waste of ground water resources through inefficient or incompetent operations of drillers or makers of water wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to ensure that competency in the drilling and making of water wells in this state is obtained.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974.

section embodying the changes made by both amendments.

Amendments

Chapter 232, Laws of 1974, made a minor change in punctuation.

Chapter 350, Laws of 1974 made minor changes in phraseology and punctuation and deleted two paragraphs containing definitions and exceptions. See secs. 66-2602.1 and 66-2602.2.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 232 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

66-2602.1. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of water well contractors, provided for in section 82A-1602.26.

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include excavations by backhoe, or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is twenty-five (25) feet or less, or spring development, and the term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil or natural gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a natural person, who constructs a water well on lands other than his own, for compensation. Any firm, corporation or partnership may engage in the business of constructing water wells provided a licensed contractor herein is placed in charge of all water well construction.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975.

Compiler's Notes

This section is derived from the former second paragraph of section 66-2602, as amended by Sec. 2, Ch. 232, Laws of 1974.

Amendments

Chapter 232, Laws of 1974, inserted the phrases "or for the purpose of stock watering or irrigation" and "or spring development" in the second sentence of the definition of "water well" in subdivision (3).

The 1975 amendment inserted "natural"

before "person" in the first sentence of subsection (4); deleted "firm, copartnership, association or corporation" after "natural person" in subsection (4); and added the second sentence of subsection (4).

66-2602.2. Exceptions. This act does not apply to:

(1) An individual who drills a water well on land which is owned or leased by him and is used by him for farming, ranching, or agricultural purposes or as his place of abode, and who obtains a permit from the board, which permit the board shall issue upon finding that the drilling is exempted under this paragraph; or

(2) An individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974.

Compiler's Notes

This section is derived from the former third paragraph of section 66-2602 as amended by Sec. 2, Ch. 232, Laws of 1974.

Amendments

Chapter 232, Laws of 1974, inserted "and who obtains a permit from the board, which permit the board shall issue upon finding that the drilling is exempted under this paragraph" in subdivision (1).

66-2604. Board—seal—compensation. (1) The board shall have a seal with the following words engraved thereon: "Board of Water Well Contractors." This seal shall be affixed to writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of the seal.

(2) The board may employ such persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. Each appointed member of the board who is not a state employee shall receive, as compensation for his services, twenty dollars (\$20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and travel expenses as provided for in sections 59-538, 59-539, and 59-801. Employees of the state of Montana who are members of the board shall receive no extra compensation for their services as members of the board.

History: En. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975.

Amendments

The 1973 amendment deleted "section 1, article XIX, of" before "the constitution" in former subsection (3).

The 1974 amendment deleted the former first three subsections relating to the water well contractor's examining board, its composition, and oath of office; substituted "Board of Water Well Contractors" in sub-

section (1) for "Water Well Contractor's Examining Board"; substituted "Employees of the state of Montana who are members of the board" in the last sentence for "The state engineer and the director of environmental sanitation of the state board of health of the state of Montana"; and made minor changes in phraseology.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "per diem expenses as provided by law" in subsection (2); and made minor changes in phraseology.

66-2605. Powers and duties of the board. (1) The board may exercise the authority granted to it by this act.

(2) The board shall adopt rules and orders to effectuate this act.

(3) The board may request the department to inspect water wells drilled, or being drilled, and the department has access to these at reasonable times.

(4) The board may, subject to sections 82A-1603 and 82A-1604, establish a program for training water well drillers or prospective water well drillers and apprentices, to more effectively carry out this act.

(5) The rules of the board shall be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(6) The board shall authorize the department to issue licenses to qualified water well contractors in this state; cause examinations to be made of applicants for licenses; revoke or suspend licenses for good cause, after notice and opportunity to be heard; reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and, generally, perform duties which will carry out this act.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted "or its authorized representative" in subsection (3) after "board"; substituted "may request the department to inspect" in subsection (3) for "shall have the power and authority to inspect"; substituted "the department has access" in subsection (3) for "shall have access"; inserted "subject to

sections 82A-1603 and 82A-1604" in subsection (4); deleted the first three sentences of subsection (5) relating to a public hearing (see parent volume); substituted "department" in subsection (5) for "board"; deleted "with the treasurer of the state" in subsection (5) after "deposited"; added "subject to section 82A-1603(6)" to the end of subsection (5); substituted "board shall authorize the department" in subsection (6) for "board has authority, and it is its duty"; and made minor changes in punctuation and phraseology.

66-2606. Water well contractor's licenses. (1) A person desiring to engage in the drilling, making, or construction of one (1) or more wells for underground water in this state shall first file an application with the department for a contractor's license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board, on forms adopted by the board. The department shall charge a fee of one hundred dollars (\$100) for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

(2) A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the

qualifications numbered (a) through (f) in section 66-2608(1) and who has applied for a license under this act. The temporary license entitles the holder to engage in the business of drilling, making, or constructing water wells until the time of the next examination given under section 66-2608. On the applicant's successfully meeting the board's requirements on examination, the temporary license shall be returned to the department and a regular license issued. If the holder of a temporary license fails, after notice of the holding of an examination, to submit himself for examination or to meet the board's requirements, the temporary license expires and shall be returned to the department for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" throughout the section for "board"; deleted "with the state treasurer" in the fourth sentence of subsection (1) after "deposited"; deleted "water well contractor's examining" in the fourth sentence of subsection (1) before "board"; added

"subject to section 82A-1603(6)" at the end of the fourth sentence of subsection (1); deleted two sentences from the end of subsection (1) relating to license applicants already engaged in well drilling and construction for three years prior to the act (see parent volume); substituted "under section 66-2608" at the end of the second sentence of subsection (2) for "by the board"; inserted the subsection designations; and made minor changes in style, punctuation and phraseology.

66-2607. License year. The term for licenses issued under this act is from July 1 of each year through the following June 30. After the payment of the initial fee under section 66-2606 a licensee shall pay, before the first day of each license year, a renewal fee of twenty-five dollars (\$25). If a licensee does not apply for renewal of his license before the first day of a license year, and remit to the department the renewal fee, he shall have his license suspended by the board; and, if the license remains suspended for a period of more than thirty (30) days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least ten (10) days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license, once revoked, may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. A person whose license has been revoked, through his own fault, if he desires to engage in the business of water well drilling in this state, or contracting therefor, must apply under section 66-2606. Notice of suspension shall be given a licensee when the suspension occurs.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "before the first" in the second sentence for "on or before the first"; substituted "department" throughout the section for "board"; deleted "through United States mail, postage

prepaid" at the end of the fourth sentence; deleted "through error or omission, or other fact or circumstance" in the fifth sentence before "indicating"; deleted "and the 'without examination' proviso contained therein shall not apply to him" at the end of the next-to-last sentence; and made minor changes in style, punctuation and phraseology.

66-2608. Examination and qualifications. (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells which the board adopts, the department shall, subject to section 82A-1603(4), inquire by examination or otherwise, into the qualifications of applicants for licenses to drill or make wells for the production of underground waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are: (a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells; (b) knowledge of types of water well construction; (c) knowledge of types of drilling tools and their uses; (d) knowledge of underground geology in its relation to well construction; (e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board; (f) financial responsibility of the applicant; (g) successful completion of an examination given by the department; (h) the applicant must have completed a minimum of one (1) year apprenticeship under the direct supervision of a licensed water well contractor.

(2) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of six (6) months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 232 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 232, Laws of 1974, inserted the provision contained in item (h) in subsection (1) that an applicant for a license must have completed a minimum of one year apprenticeship under the supervision of a licensed water well contractor.

Chapter 350, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; revised the section to provide that the department instead of the board shall inquire into qualifications of applicants and give examinations; and made minor changes in phraseology and punctuation.

66-2609. Bond to be required. The department, on issuance of a license under this act shall require, before the person commences operations in this state a good and sufficient surety bond, or in lieu thereof its equivalent in a certificate of deposit, cashiers check, bank draft or certified check, to be approved by the board, in the penal sum of one thousand dollars (\$1,000), conditioned that the licensee will comply with the rules of the board and reasonable requirements made by the board in connection with the drilling of an individual well.

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975.

Amendments

Chapter 232, Laws of 1974, made no change in the text of the section.

Chapter 350, Laws of 1974, substituted "The department" for "The board" at the

beginning of the section and made minor changes in phraseology and punctuation.

The 1975 amendment inserted "or in lieu thereof its equivalent in a certificate of

deposit, cashiers check, bank draft or certified check" after "surety bond"; and made minor changes in phraseology.

66-2610. Revocation and suspension. (1) A license issued under this act may be suspended or revoked by the board, in cases other than failure of a licensee to renew the license, after notice and hearing, in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license, for the practice of fraud or deceit in obtaining a license, for gross negligence, incompetence, conviction of a felony, or violating the requirements of this act. Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board, on its own motion, or on receipt of a complaint, shall hold a hearing on charges.

(2) A person bringing the complaint has the burden of proof and must appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of one (1) year.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "or on receipt of a complaint" in the last sentence

of subsection (1); deleted material at the beginning of subsection (2) relating to hearing and notice requirements and procedure (see parent volume); inserted the subsection designations; and made minor changes in punctuation and phraseology.

66-2611. Repealed.

Repeal

Section 66-2611 (Sec. 11, Ch. 176, L. 1961), relating to appeals from board deci-

sions, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2614. Repealed.

Repeal

Section 66-2614 (Sec. 14, Ch. 176, L. 1961), relating to repeal clause and con-

struction of act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS

Section

66-2701. **Definitions.**

66-2702. [Transferred.]

66-2703. **Officers of board—compensation of members.**

66-2706. **Disposition of fees.**

66-2707. **Funeral directing.**

66-2708. **Embalming and mortuary science—qualifications for mortician's license.**

66-2709. **Examination for morticians.**

66-2711. **Mortician's license—fee and renewal.**

66-2715. **Hearing and notice—revocation and suspension of licenses.**

66-2701. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of morticians, provided for in section 82A-1602.16.

(2) "Funeral directing" includes

- (a) Supervising funerals,
- (b) Preparing dead bodies for burial other than by embalming,
- (c) Maintaining a mortuary for the preparation, disposition, or care of dead human bodies, and

(d) The holding out to the public that one is a funeral director or undertaker.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.

(4) "Mortuary science" is the profession or practice of funeral directing and embalming.

(5) A "mortician" is a person licensed under this act to practice mortuary science.

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

(7) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974.

definition of "board" in subdivision (1) for "the state board of morticians"; added subdivision (7); and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted the

66-2702. [Transferred.]

Compiler's Notes

Section 261, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.16.

66-2703. Officers of board—compensation of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members may serve for a compensation of \$25 per day for attending board meetings and shall be reimbursed for travel expenses, as provided for in sections 59-538, 59-539, and 59-801, connected with attending meetings or in the discharge of other board duties.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801 connected with" for "actual and necessary expenses incurred in."

Amendments

The 1974 amendment deleted "In addition to such reimbursement the secretary-treasurer may be paid a salary set by the board" at the end of the section; and made minor changes in phraseology.

The 1977 amendment substituted "may serve for a compensation of \$25 per day for attending board meetings and" in the middle of the second sentence for "shall serve without compensation but."

66-2705. Repealed.

Repeal

Section 66-2705 (Sec. 5, Ch. 41, L. 1963), relating to employees of the board, was

repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2706. Disposition of fees. Money collected by the department under this act shall be deposited for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted the

present section for one reading "All moneys collected by the board shall be deposited within the state treasury and shall be used only for the purpose of defraying the necessary expenses of administering this act."

66-2707. Funeral directing. The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the department. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license on payment of an annual renewal license fee to the department on July 1 of each year. The amount of the annual renewal license fee shall be set by the board but may not exceed twenty-five dollars (\$25). A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975.

Amendments

The 1974 amendment substituted "department" for "board" in the first two

sentences; and made a minor change in phraseology.

The 1975 amendment inserted "renewal" before "license fee" in two places; and increased the maximum renewal fee from \$5 to \$25.

66-2708. Embalming and mortuary science—qualifications for mortician's license. The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the department. To qualify for a mortician's license a person must:

- (1) Be of good moral character.
- (2) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university.
- (3) Pass an examination prescribed by the board.
- (4) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974.

Amendments

The 1971 amendment deleted a former subdivision (1) reading "Be at least twenty-one (21) years of age"; and redesignated former subdivisions (2) to (5),

inclusive, as subdivisions (1) to (4), inclusive.

The 1974 amendment substituted "department" for "board" in the first sentence; deleted "This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act" at the end of subdivision (2); and made minor changes in punctuation.

66-2709. Examination for morticians. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee as set by the board but not to exceed seventy-five dollars (\$75), may take the examination prescribed by the board. The ex-

amination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12 Ch. 215, L. 1975.

Amendments

The 1974 amendment substituted "department" for "board" in the first sen-

tence; and made minor changes in style and phraseology.

The 1975 amendment increased the application fee from \$25 to "as set by the board but not to exceed seventy-five dollars (\$75)."

66-2711. Mortician's license—fee and renewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be set by the board but may not exceed fifty dollars (\$50).

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty of twenty-five dollars (\$25).

History: En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975.

Amendments

The 1974 amendment deleted "in the hands of the secretary-treasurer or" in the first sentence of subsection (1) before "postmarked"; and made minor changes in style and phraseology.

The 1975 amendment substituted "renewal fee" for "license fee" throughout the section; increased the maximum renewal fee from \$10 to \$50; and deleted a final sentence in subdivision (1) which read: "A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of this date, apply for and receive a mortician's license on payment of the license fee."

66-2715. Hearing and notice—revocation and suspension of licenses. No action to suspend, revoke, or cancel a license may be taken by the board until the accused has been given notice and a hearing on the charges. If, at the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted a clause in the first sentence providing for notice at

least thirty days prior to the hearing; deleted two final sentences relating to records of the proceedings and copies of transcripts; and made minor changes in phraseology. For prior version, see parent volume.

66-2716. Repealed.

Repeal

Section 66-2716 (Sec. 16, Ch. 41, L. 1963), relating to appeals from board deci-

sions, was repealed by Sec. 363, Ch. 350, Laws of 1974.

CHAPTER 28—ELECTRICAL SAFETY LAW

Section

- 66-2802. **Purpose.**
- 66-2803. **Definitions.**
- 66-2804. **[Transferred.]**
- 66-2805. **Meetings—powers—compensation.**
- 66-2805.1. **Department—inspections—tags.**
- 66-2806. **Electrician must have license.**
- 66-2807. **License requirements.**
- 66-2809. **License to nonresidents—reciprocity.**
- 66-2810. **Temporary permits.**

- 66-2811. License without written examination.
- 66-2812. Exemptions.
- 66-2814. Fees.
- 66-2815. Examination fees.
- 66-2817. Apprentices—rules—record kept by department.
- 66-2819. Disposition of fees.

66-2801. Repealed.**Repeal**

Section 66-2801 (Sec. 1, Ch. 148, L. 1965), relating to the short title of the

act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2802. Purpose. (1) The purpose of this act is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; to assure the public that persons making electrical installations are qualified; and to insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards. All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 66-2812, shall be made substantially in accord with building codes adopted by the department of administration.

(2) Rules and standards relating to buildings and equipment shall be promulgated by the department of administration.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977.

Amendments

The 1973 amendment added the last two sentences to subsection (1).

The 1974 amendment inserted the reference to section 66-2812 in the second sentence of subsection (1); deleted "of electricians" in the last sentence of subsection (1) after "board"; substituted "department of administration" in subsection (2) for "state building code council"; and made minor changes in punctuation and phraseology. Section 12, Ch. 226, Laws of 1974, also directed the substitution of "department of administration" in subsection (2) for "state building code council."

The 1977 amendment substituted "shall be made substantially in accord with building codes adopted by the department of

administration" at the end of subsection (1) for "shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to this work as far as it covers fire and personal injury hazards, and as the National Electrical Code shall be amended. The standards as set forth in the National Electrical Code shall be prima facie evidence of minimum approved methods of construction for safety to life and property. The affirmative vote of a majority of all appointed members of the board shall be required to set any standards that are more stringent than those set forth in the National Electrical Code"; and substituted "shall be promulgated by the department of administration" at the end of subsection (2) for "covered by the state or a municipal building code are not effective until approved by the department of administration and filed with the secretary of state."

66-2803. Definitions. Unless the context requires otherwise, in this act: (1) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(2) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes, under the rules governing this work.

(3) "Electrical contractor" means a person, firm, copartnership, corporation, association, or combination of these, who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Board" means the state electrical board, provided for in section 82A-1602.10.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 3, Ch. 148, L. 1965; subdivisions; added subdivisions (4) and (5); and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment redesignated the

66-2804. [Transferred.]

Compiler's Notes

Section 271, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.10.

66-2805. Meetings—powers—compensation. (1) Each July the board shall elect from its membership a president, vice-president, and secretary-treasurer. The board shall meet quarterly and at such other times it considers necessary.

(2) The board may:

(a) adopt rules for the administration of this act and for the licensing of electrical contractors and the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this act;

(d) suspend or revoke a license granted under this act for any of the following reasons:

(i) violation of this act, the national electrical code, or the rules of the board;

(ii) any cause for which issuance of the license could have been denied had it existed and been known to the board;

(iii) commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master or journeyman electrician or the business of an electrical contractor; or

(iv) making a material misstatement, misrepresentation, or fraud in obtaining a license.

(3) Each member of the board shall receive travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incurred in the performance of his duties.

History: En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977.

Amendments

The 1974 amendment deleted a first subsection relating to the oath of office for board members (see parent volume); redesignated the subsections; inserted "master and" in subdivision (2)(a); deleted a remaining portion of subdivision (2)(a) relating to inspections, fees, and tags (see parent volume); deleted "and the secretary shall have the care and custody thereof" at the end of subdivision (2)(b); deleted a subdivision after subdivision (2)(b) re-

lating to examining, licensing, and license renewal (see parent volume); substituted "act" for "article" at the end of subdivision (2)(c); deleted "and incur necessary expenses therefor" at the end of subdivision (2)(c); deleted a last subdivision relating to employment of assistance (see parent volume); added subdivision (2)(d) and subsection (3); and made minor changes in punctuation and phraseology.

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (3) for "actual and necessary expenses"; and made minor changes in phraseology and style.

66-2805.1. Department—inspections—tags. (1) The department of administration shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection.

(2) Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Power suppliers may not connect with or energize an electrical installation, under this act, unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of administration.

(3) Immediately after an installation has been energized, the power supplier shall deliver to the department of administration the inspection tag covering the installation.

(4) It is unlawful for a person, partnership, company, firm, association, or corporation, other than a power supplier, to energize an electrical installation under this act, unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of administration.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977.

Amendments

The 1977 amendment inserted "of administration" after "department" throughout the section.

66-2806. Electrician must have license. A person may not engage in or work at the business, trade, or calling of electrical contractor, journeyman electrician, or master electrician in this state, until he has received from the department a license or permit to work as an electrical contractor, journeyman electrician, or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974.

partment" for "state electrical board"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

66-2807. License requirements. (1) Master electrician's license:

(a) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college

or university and has one (1) year of practical electrical experience, or that he is a graduate of an electrical trade school and has at least four (4) years of practical experience in electrical work, or that he has had at least five (5) years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power. Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department together with the examination fee. The board shall, not less than thirty (30) days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected the board shall set forth the reasons in the notice to the applicant, and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated by the board and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(b) The written examination shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and his technical application in the following subjects:

- (i) The National Electrical Code;
 - (ii) Cost estimating for electrical installments;
 - (iii) Procurement and handling of materials needed for electrical installations and repair;
 - (iv) Reading of blueprints for electrical work;
 - (v) Drafting and layout of electrical circuits;
 - (vi) Knowledge of practical electrical theory.
- (2) Journeyman electrician's license:

(a) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least four (4) years apprenticeship in the electrical trade or four (4) years practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses.

(b) The written examination for a journeyman's license shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

- (i) The Ohms law;
- (ii) The National Electrical Code;
- (iii) Layout and practical installation of electrical circuits.

(3) To ensure impartiality, the examination for either license shall be by numbers drawn by lot. A paper may not be marked with the name of an applicant but shall be anonymously graded by the department, subject to section 82A-1603. The examination passing grade is seventy-five per cent (75%). If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license which authorizes him to engage in the business, trade,

or calling of a journeyman electrician or master electrician. Each original license expires on July 15 which is at least one (1) year but not more than two (2) years subsequent to the date of issuance.

(4) Licenses of journeyman electricians or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of one (1) year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee of five dollars (\$5) shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited, and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "(1) Master electrician's license"; inserted "by the board" in the second sentence of subdivision (1)(a); substituted "department" throughout the section for "state electrical board" and "board," and in the fourth sentence of subsection (3) for "secretary"; inserted "authorize the department to" in

the third sentence of subdivision (1)(a); inserted "(2) Journeyman electrician's license"; redesignated former subdivisions (c) and (d) as subdivisions (2)(a) and (2)(b); redesignated former subdivisions (e) and (f) as subsections (3) and (4); inserted "for either license" near the beginning of subsection (3); added "subject to section 82A-1603" at the end of the second sentence of subsection (3); and made minor changes in punctuation and phraseology.

66-2809. License to nonresidents—reciprocity. To the extent that other states, which provide for the licensing of electricians, provide for similar action, the board may grant licenses to electricians licensed by other states, on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted "state electrical" before "board"; and made minor changes in punctuation and phraseology.

66-2810. Temporary permits. The board may authorize the department to issue temporary permits to engage in the work of a master electrician or journeyman electrician to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. Temporary permits continue in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted "state elec-

trical" before "board" at the beginning of the section; inserted "authorize the department to" near the beginning of the section; and made minor changes in phraseology.

66-2811. License without written examination. The board may authorize the department to issue a license as a master electrician or journeyman electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this act and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted "state elec-

trical" before "board" at the beginning of the section; inserted "authorize the department to" near the beginning of the section; and made minor changes in phraseology.

66-2812. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration or repair of electrical signal or communications equipment owned or operated by a public utility or a city. The licensing or inspection provisions of this act do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(2) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence, provided that said property or residence is maintained for his own use.

(3) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction, control, and supervision of a licensed master electrician.

(4) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(5) No provisions of this chapter shall in any manner interfere with, hamper, preclude or prohibit any vendor of any electrical appliance, from selling, delivering and connecting any electrical appliance, if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975.

Amendments

The 1973 amendment substituted "alteration or repair of electrical signal or communications equipment owned or operated by public utility or city" for "maintenance of communication circuits, wires and apparatus" in the first sentence of subsection (1); deleted "nor to any electrical public utility, or its employees, in the installation and maintenance of electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants. lines or

system" at the end of the first sentence in subsection (1); inserted "or inspection" near the beginning of the second sentence in subsection (1); inserted "or to regularly employed maintenance electricians" at the end of the second sentence in subsection (1); and inserted "or residence, provided that said property or residence is maintained for his own use" at the end of subsection (2).

The 1975 amendment changed the subsection designations from letters to numbers; substituted "chapter" for "act" in subsection (1) and for "article" in subsections (2) and (5); deleted "persons making electrical installations on their own property" after "do not apply to" in the

second sentence of subsection (1); inserted "business" before "premises of their employer"; substituted the exception for line work and other in-plant or on-sight electrical work at the end of subsection (1) for "or to regularly employed main-

tenance electricians"; deleted former subsection (c), found in the parent volume; inserted "and supervision" after "direction, control" in subsection (3); and made minor changes in style and phraseology.

66-2813. Repealed.

Repeal

Section 66-2813 (Sec. 13, Ch. 148, L. 1965), relating to appeals from board deci-

sions, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2814. Fees. Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee of seventy-five dollars (\$75) for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this act is entitled to have his license renewed for the ensuing year by payment to the department of a fee of seventy-five dollars (\$75) before the date of expiration of the license.

History: En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "before" in the first and last sentences for

"on or before"; substituted "department" throughout the section for "state electrical board"; deleted "upon the expiration of his license" in the last sentence after "ensuing year"; and made minor changes in phraseology.

66-2815. Examination fees. Master electricians who are not electrical contractors and journeyman electricians installing or intending to install for hire electric wiring or equipment to convey electric current, or apparatus to be operated by this current, shall make application for a license to the department. The application shall be on a form furnished by the department and accompanied by an examination fee of ten dollars (\$10). The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, he shall pay to the department an annual license fee of: twenty-five dollars (\$25) for a master electrician's license; or ten dollars (\$10) for a journeyman electrician's license, and upon receipt of either fee, the department shall issue the proper license to the applicant. A person serving a four (4) year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, or apprentice, up to a total of two (2) years on the four (4) year requirement.

History: En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted "within sixty (60) days after the first day of July,

1965" near the end of the first sentence; substituted "department" throughout the section for "state electrical board" and "board"; substituted "board" at the end of the third sentence and near the beginning of the fourth sentence for "state elec-

trical board"; substituted "receipt of either fee" near the end of the fourth sentence for "receipt thereof"; deleted "for the time spent in said classes" in the last sen-

tence after "apprentice"; and made minor changes in style, punctuation and phraseology.

66-2816. Repealed.

Repeal

Section 66-2816 (Sec. 16, Ch. 148, L. 1965; Sec. 1, Ch. 199, L. 1967), relating to

licensing of persons qualified as of July 1, 1965, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-2817. Apprentices—rules—record kept by department. This act does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this act, and under rules made by the [board]. The name and residence of each apprentice, and the names and residences of their employers, shall be filed with the department, and a record shall be kept by the department, showing the names and residences of these apprentices.

History: En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974.

Compiler's Notes

The bracketed word "board" has been inserted by the compiler to correct an apparent error.

Amendments

The 1974 amendment substituted "li-

censed under this act" in the first sentence for "licensed by said board as herein provided for"; deleted "state electrical" at the end of the first sentence before "[board]"; substituted "department" in two places in the second sentence for "board"; and made minor changes in punctuation and phraseology.

66-2819. Disposition of fees. Money collected by the department under this act shall be deposited in the earmarked revenue fund, for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974.

Amendments

The 1974 amendment rewrote this section. For prior version, see parent volume.

CHAPTER 29—MASSAGE THERAPISTS—REGULATION AND LICENSING

Section

- 66-2902. Definitions.
- 66-2903. [Transferred.]
- 66-2904. Organization of board—meetings—powers and duties.
- 66-2905. Practicing without a license—license without examination.
- 66-2906. Application and fees for license.
- 66-2907. Examinations.
- 66-2908. Denial, suspension, or revocation of license.
- 66-2909. Renewal of license.
- 66-2910. Disposition of fees—receipts and disbursements.
- 66-2914. Exemptions.

66-2901. Purpose of act.

Terminology Changed

Section 26, Ch. 101, Laws 1977, provides: "Unless inconsistent with the clear intent of the context in which such terms appear, any reference in 66-2901, to the terms 'masseur' or 'masseuse' means 'mas-

sage therapist'. Any reference in 66-2902 through 66-2914, to the term 'masseur' means 'massage therapist' and any reference to 'massage' means 'massage therapy'."

66-2902. Definitions. Unless the context requires otherwise, in this act:

(1) "Massage therapist" includes persons engaged in the occupation of massage therapy and includes the feminine "masseuse."

(2) "Massage therapy" means the trained ability of body massage therapy by hands for the purpose of body massage therapy, the use of oil rubs, salt glows, hot and cold packs, tub, shower or cabinet baths; and the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.

(3) "Practice of massage therapy" means to perform massage therapy as above defined, for remuneration or hire, or to advertise, by the use of [the] word massage therapy in any of its derivations or genders, or by any other means, the practice of massage therapy.

(4) "Massage therapy establishment" means a place in which any of the above procedures and methods are administered or used.

(5) "Board" means the board of massage therapists, provided for in section 82A-1602.14.

(6) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 321, Laws of 1974, inserted the

preliminary clause; inserted subsection (3); substituted "board of masseurs" in subsection (5) for "Montana board of massage examiners"; and made minor changes in style, punctuation and phraseology.

Chapter 350, Laws of 1974, inserted the preliminary clause; substituted "board of massage therapists, provided for in section 82A-1602.14" in subsection (5) for "Montana board of massage examiners"; added subsection (6); and made minor changes in style, punctuation and phraseology.

66-2903. [Transferred.]

Compiler's Notes

Section 284, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.14.

66-2904. Organization of board—meetings—powers and duties. (1) The board shall annually elect a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold one (1) regular meeting each year, at the city of Helena, Montana, and shall hold special meetings at times and places a majority of the board designates; however, not more than four (4) meetings may be held in any one (1) year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the power of the board. It shall adopt a seal, which shall be affixed to licenses issued, and may adopt rules it considers proper and necessary for the performance of its duties, and shall adopt a schedule of minimum educational requirements, not inconsistent with this law, which shall be without prejudice, partiality, or dis-

ermination as to the different approved schools of massage therapy training. The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

History: En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment deleted "within thirty (30) days" following "shall convene" in the first paragraph; substituted "each appointment" for "their appointment" in the first paragraph; deleted "and thereafter annually elect," following "elect" in the first paragraph; deleted "on the second Friday of January" following "regular meeting" in the second

paragraph; and made minor changes in phraseology.

Chapter 321, Laws of 1974, inserted "approved" in the next-to-last sentence of subsection (3) before "schools."

Chapter 350, Laws of 1974, inserted the subsection designations; deleted "of massage examiners" after "board" at the beginning of subsection (1); deleted "convene within thirty (30) days after their appointment and elect, and thereafter" in subsection (1) before "annually"; deleted "on the second Friday of January in" in the first sentence of subsection (2) before "each year"; inserted "power of the" at the end of the first sentence of subsection (3); substituted "may" for "shall" in the second sentence of subsection (3) before "adopt rules"; substituted "department" for "secretary of said board" in the last sentence of subsection (3); deleted a final paragraph relating to issuing a masseur's license to board members (see parent volume); and made minor changes in style, punctuation and phraseology.

66-2905. Practicing without a license—license without examination.

(1) It is unlawful for a person to practice the occupation of massage therapy in any of its arts and sciences in this state without first obtaining a license under this act.

(2) When application for examination for license is filed with the department the board may authorize the department to issue to the applicant a temporary permit to engage in the occupation of massage therapy, which is good until the next meeting of the board.

History: En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 321, Laws of 1974, inserted "in any of its arts and sciences" in subsection (1); and made a minor change in phraseology.

Chapter 350, Laws of 1974, inserted the subsection designations; deleted a second sentence in subsection (1) which provided for licensing without examination for persons already in practice (see parent volume); substituted the first reference to "department" in subsection (2) for "board"; inserted "authorize the department to" in subsection (2); and made minor changes in phraseology.

66-2906. Application and fees for license. (1) A person wishing to engage in the occupation of a massage therapist in this state shall make application to the department on the form and in the manner prescribed by the board, at least fifteen (15) days prior to a meeting of the board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage therapy certifying not less than one thousand

(1,000) hours of study satisfactory to the school. Application shall be in writing and sworn to by some officer authorized to administer oaths, and shall recite the history of the applicant's educational qualifications, how long he has studied massage therapy, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage therapy, accompanying this with proof by a diploma or certificate and with satisfactory evidence of good character and reputation.

(2) There shall be paid to the department, by an applicant for a license, a fee of thirty-five dollars (\$35) which shall accompany the application. An applicant failing to pass the requirements is entitled within six (6) months to a re-examination on payment of an additional fee of ten dollars (\$10), but on a third failure may not reapply for a period of one year.

History: En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 321, Laws of 1974, substituted "board" for "board of massage examiners" in the first sentence of subsection (1) after "application to" and in the first sen-

tence of subsection (2) before "by an applicant"; deleted "or like institution" in the second sentence of subsection (1) after "massage"; inserted "for a period of one (1) year" at the end of subsection (2); and made minor changes in phraseology.

Chapter 350, Laws of 1974, inserted the subsection designations; deleted "after August 1, 1967, except those licensed under section 66-2905" in the first sentence of subsection (1) after "state"; substituted "department" in both subsections for "board of massage examiners" and "secretary-treasurer of the state board of massage examiners"; deleted "through the secretary-treasurer thereof" in subsection (1) after "department"; and made minor changes in punctuation and phraseology.

66-2907. Examinations. (1) Examinations for licenses to engage in the occupation of massage therapy shall be made by the department, subject to section 82A-1603, and according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications.

(2) Examinations shall be in writing, and in addition each applicant shall pass a reasonable demonstrative and oral examination. Minimum requirements are a general average in the examination of seventy-five per cent (75%) in all subjects and not less than fifty per cent (50%) in any one (1) subject. In addition to the subjects as may be designated by the board, the examination shall include principles of sanitation and hygiene.

History: En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted the subsection designations; substituted "department" in subsection (1) for "board"; in-

serted "subject to section 82A-1603" in subsection (1); deleted "conducted by and under the supervision and direction of said board" at the end of the first sentence of subsection (2); and made minor changes in punctuation and phraseology.

66-2908. Denial, suspension, or revocation of license. The board may, after hearing, deny, suspend, revoke or refuse to renew a license under this act to a person, otherwise qualified, who obtained the license by fraudulent

representation, for incompetency in practice, for use of untruthful or improbable statements to patrons or in his advertisements, for habitual intoxication, for failure to renew, or for unprofessional and immoral conduct. The board may authorize the department to reissue a license after a lapse of not less than six (6) months, if in the board's judgment, the act or conditions of disqualification have been remedied. It is a violation of this act for a person engaged in the occupation of a massage therapist to advertise or assert as a licensee under this act that he diagnoses or treats a disease, injury, or illness.

History: En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 321 and once by Ch. 350. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 321, Laws of 1974, substituted

"board" at the beginning of the section for "state board of massage examiners"; inserted "suspend" near the beginning of the first sentence; and inserted "for failure to renew" near the end of the first sentence.

Chapter 350, Laws of 1974, substituted "board" at the beginning of the section for "state board of massage examiners"; substituted "deny, suspend, revoke or refuse to renew" in the first sentence for "refuse to grant, revoke or renew"; inserted "authorize the department to" in the second sentence after "board may"; and made minor changes in punctuation and phraseology.

66-2909. Renewal of license. A license expires on December 31 of each year and shall be renewed then or thereafter, by the department, on payment of a renewal fee of not less than \$10 or more than \$25, as set by the board.

Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal fee, in an amount not to exceed \$10. Failure to so renew within 30 days following December 31 shall be cause for suspension or revocation of the license.

History: En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6; Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977.

Amendments

Chapter 321, Laws of 1974, substituted "board" at the end of the first sentence for "state board of massage examiners"; and added the second and third sentences.

Chapter 350, Laws of 1974, substituted "department" in the first sentence for "board"; substituted "board" at the end of the first sentence for "state board of massage examiners"; and made minor changes in punctuation and phraseology.

The 1977 amendment divided the section into paragraphs; and made minor changes in style.

66-2910. Disposition of fees—receipts and disbursements. (1) Examination and renewal fees received by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

(2) The department shall keep an accurate account of funds received and vouchers issued.

(3) The members of the board shall receive a compensation of twenty-five dollars (\$25) for each day during which they are actually engaged in

the discharge of their duties, and shall be allowed travel expenses, as provided for in sections 59-538, 59-539, and 59-801.

(4) Compensation, mileage, and other expenses necessarily connected with the board shall be paid only out of the earmarked revenue fund.

History: En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975.

Amendments

Chapter 321, Laws of 1974, substituted "board" in subsections (1) and (4) for "state board of massage examiners"; increased the per diem in subsection (3) from \$15 to \$25; and substituted "as set forth in section 59-801, R. C. M. 1947" in subsection (3) for "at the rate of ten cents (10¢) per mile."

Chapter 350, Laws of 1974, inserted the subsection designations; substituted "department" for "state board of massage examiners" in subsection (1) and for "secretary-treasurer" in subsection (2); deleted portions of subsection (1) which provided for fees to go into an expense account by way of the secretary-treasurer of the state

board and the state treasurer (see parent volume); added "subject to section 82A-1603(6)" at the end of subsection (1); deleted from the end of subsection (2) "by the board," and a provision for an annual report to the governor (see parent volume); substituted "as provided in section 59-801" in subsection (3) for "at the rate of ten cents (10¢) per mile"; deleted "of the state board of massage examiners" at the end of subsection (4); and made minor changes in punctuation and phraseology.

The 1975 amendment substituted "compensation" for "per diem" in subsection (3) and at the beginning of subsection (4); and substituted "shall be allowed travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "mileage as provided in section 59-801 for each mile necessarily traveled in going to and from a meeting of the board" at the end of subsection (3).

66-2911 to 66-2913.

Compiler's Notes

Section 26, Ch. 101, Laws 1977, inserted "therapy" after "massage" and substituted

"massage therapist" for "masseur" in these sections.

66-2914. Exemptions. The following classes of persons are exempt from this act:

1. and 2. * * * [Same as parent volume.]

3. Educational institutions maintaining a full-time faculty with a varied curriculum.

4. Athletic clubs and others who apply for and acquire from the board an exemption. Such an exemption may be granted or denied at the discretion of the board in carrying out the purposes of this act.

5. Those persons who may have qualified for exemption under prior law shall be required by this act to qualify for exemption in the manner stated in this section before their exemption may be continued.

History: En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974.

3 which exempted "schools, Y.M.C.A. clubs, athletic clubs, and similar organizations who furnish massage to their players and members"; and added items 3, 4 and 5.

Amendments

The 1974 amendment deleted former item

CHAPTER 30—HEARING AID DISPENSERS

Section

66-3003. Definitions.

66-3004. [Transferred.]

66-3005. Powers and duties of board.

66-3006. Meeting place and time—quorum.

66-3007. License required to dispense and fit hearing aids.

- 66-3009. Exclusions.
- 66-3011. Written and practical tests—date of examinations.
- 66-3014. Temporary license—qualifications—fee.
- 66-3015. Permanent place of business in state necessary—exception—records—notice.
- 66-3016. Annual renewal fee.
- 66-3017. Revocation or suspension for cause.
- 66-3019. Reciprocity—examination unnecessary—fee.
- 66-3020. Deposit of fees in earmarked revenue fund—per diem and travel expenses.
- 66-3022. Licensee entitled to disciplinary hearing.

66-3002. Repealed.

Repeal

Section 66-3002 (Sec. 2, Ch. 204, L. 1969), relating to creation of board of hearing aid dispensers, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-3003. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of hearing aid dispensers, provided for in section 82A-1602.12.

(2) "License" means a regular or temporary license.

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear, but does not include batteries, cords, or accessories.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 3, Ch. 204, L. 1969; for in section 82A-1602.12" in subdivision and. Sec. 292, Ch. 350, L. 1974. (1); added subsection (5); and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment inserted "provided

66-3004. [Transferred.]

Compiler's Notes

Section 293, Ch. 350, Laws of 1974 re-numbered this section as sec. 82A-1602.12.

66-3005. Powers and duties of board. The powers and duties of the board are to:

(1) License persons who apply and are qualified to practice the fitting of hearing aids;

(2) Establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this act, or their agents whether licensed or not;

(3) Suspend or revoke licenses under this act;

(4) Designate the time and place for examining applicants for license;

- (5) Adopt rules necessary to carry out this act;
- (6) Require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;
- (7) Prepare examinations required by the act;
- (8) Initiate legal action to enjoin from operation a person or corporation engaged in the sale and fitting of hearing aids in this state, who is not licensed under this act.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted former subdivisions (1) and (2) relating to authorization for disbursements and conduct of qualifying examinations for applicants; deleted former subdivision (4) relating to

issuance and renewal of licenses; deleted former subdivision (7) relating to appointment of representatives to conduct examinations; deleted former subdivision (12) relating to employment and compensation of personnel; redesignated the remaining subdivisions; and made minor changes in phraseology. For text of deleted portions, see parent volume.

66-3006. Meeting place and time—quorum. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this act. Three (3) members, including either the otolaryngologist or the audiologist, constitute a quorum.

(2) Members of the board shall annually designate one (1) member to serve as chairman and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974.

Amendments

The 1974 amendment added subsection (2); and made minor changes in style and phraseology.

66-3007. License required to dispense and fit hearing aids. A person may not engage in the sale or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current regular or temporary license issued by the department.

History: En. Sec. 7, Ch. 204, L. 1969; amd. Sec. 296, Ch. 350, L. 1974.

partment" for "board" at the end of the section; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

66-3009. Exclusions. (1) This act does not apply to a person who is a physician licensed to practice by the Montana state board of medical examiners.

(2) This act does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974.

tana state board of medical examiners" in subsection (1) for "board of medical examiners of the state of Montana."

Amendments

The 1974 amendment substituted "Mon-

66-3011. Written and practical tests—date of examinations. (1) An applicant for a license who is notified by the department that he has fulfilled the requirements of section 66-3010 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

(2) The department shall, subject to section 82A-1603, give examinations required to permit applicants to be examined within thirty (30) days following the board's approval of the application for examination. Examination may be delayed on notice to the department, under this section.

History: En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 293, Ch. 350, L. 1974.

partment" for "board" throughout the section; inserted "subject to section 82-1603" in subsection (2); and made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment substituted "de-

66-3013. Repealed.

Repeal

Section 66-3013 (Sec. 13, Ch. 204, L. 1969), relating to licensing of practitioners

active on the effective date of the act, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-3014. Temporary license — qualifications — fee. (1) An applicant who fulfills the requirements of section 66-3010 and who has not previously applied to take the examination under section 66-3011 may apply to the department for a temporary license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee of twenty-five dollars (\$25), the department shall issue a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending thirty (30) days after the conclusion of the next examination given after the date of issue.

(3) No temporary license may be issued by the department unless the applicant shows to the satisfaction of the board that he is, or will be, supervised and trained by a person who holds a valid license issued under this act.

(4) If a person who holds a temporary license does not take the next examination given after the date of issue, the temporary license may not be renewed, except for a good cause shown to the satisfaction of the board.

(5) If a person who holds a temporary license takes and fails to pass the next examination given after the date of issue, the board may authorize the department to renew the temporary license for a period ending thirty (30) days after the results of the next examination given after the dates of renewal are announced. In no event may more than two (2) renewals be permitted. The fee for renewal is thirty dollars (\$30).

History: En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974.

3013" in subsection (1) after "66-3010"; substituted "department" for "board" in subsections (1) through (3); inserted "authorize the department to" in the first sentence of subsection (5) after "board may"; and made minor changes in phraseology.

Amendments

The 1974 amendment deleted "but does not fulfill the requirements of section 66-

66-3015. Permanent place of business in state necessary—exception—records—notice. (1) A person who obtains a license to dispense hearing

aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting and hearing aid accessories needed by the hard of hearing public in the wearing of hearing aids.

(2) Subsection (1) of this section does not apply to persons who obtain a license as sales people representing a licensed hearing aid dispenser.

(3) The department shall keep a record of the places of practice of persons who hold a regular license or temporary licenses. A notice required to be given by the board or department to a person who holds a regular or temporary license may be given by mailing it to him at the address last given by him to the department.

History: En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" at the beginning and the end of subsection (3) for "board"; inserted "or department" in the second sentence of subsection (3) after "board"; and made minor changes in phraseology.

66-3016. Annual renewal fee. A person who practices the fitting of hearing aids shall annually pay to the department a fee not to exceed eighty dollars (\$80) as set by the board for a renewal of his license. The fee shall be increased ten per cent (10%) for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person who applies for renewal, whose license was suspended for failure to renew, is not required to submit to an examination as a condition of renewal for a three (3) year period after suspension.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975.

Amendments

The 1974 amendment substituted "department" in the first sentence and the end of the former second and third sentences for "board"; inserted "authorize the department to" in the former third sentence after "board may"; and made minor changes in phraseology.

The 1975 amendment increased the renewal fee from \$50 to "not to exceed eighty dollars (\$80) as set by the board"; deleted second and third sentences which

read "A thirty (30) day grace period is allowed after expiration of a license, during which it may be renewed on payment of a fee of fifty-five dollars (\$55) to the department. After the expiration of the grace period, the board may authorize the department to renew a license on payment of sixty dollars (\$60) to the department"; and inserted the present second sentence.

Effective Date

Section 15 of Ch. 215, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 31, 1975.

66-3017. Revocation or suspension for cause. A person registered under this chapter may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) being convicted of a felony, subject to Title 66, chapter 40. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction; except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) for the personal use of a false name or alias in the practice of his profession, with fraudulent intent;

(4) for violating any of the provisions of this chapter;

(5) for obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate. The term "hearing center" shall be discontinued in accordance with the code of ethics of the national hearing aid society.

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(12) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(13) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(14) selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids.

History: En. Sec. 17, Ch. 204, L. 1969;
amd. Sec. 27, Ch. 101, L. 1977.

Amendments

The 1977 amendment rewrote subdivision

(1); substituted "unlawful" for "lawful" near the end of subdivision (11); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

66-3019. Reciprocity—examination unnecessary—fee. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this act for the practice of fitting and selling hearing aids, and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this act are qualified to dispense and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended and unrevoked licenses to fit and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to submit to or undergo a qualifying examination, or the like, other than the payment of fees, if the person complies with all other requirements of this act.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974.

the department to" in the first sentence after "board may"; and made minor changes in phraseology.

Amendments

The 1974 amendment inserted "authorize

66-3020. Deposit of fees in earmarked revenue fund—per diem and travel expenses. (1) Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

(2) Each member of the board shall receive twenty dollars (\$20) compensation when actually engaged in the discharge of his official duty, and in addition shall also be reimbursed for travel expense, as provided for in sections 59-538, 59-539, and 59-801, in attending a meeting of the board in the state.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975.

Amendments

The 1974 amendment substituted "Fees collected by the department under this act" in subsection (1) for "All fees including examination fees, license fees, renewal fees, fines, penalties and other payments,"; added "for the use of the board, subject to section 82A-1603(6)" at the end of sub-

section (1); deleted two sentences at the end of subsection (1) concerning appropriations by the legislative assembly and disbursement of funds (see parent volume); and made minor changes in phraseology.

The 1975 amendment substituted "compensation" for "per diem" in subsection (2); and substituted "travel expense, as provided for in sections 59-538, 59-539, and 59-801" for "reasonable and necessary travel expense."

66-3022. Licensee entitled to disciplinary hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977.

Amendments

The 1974 amendment inserted "notice and" after "without"; deleted "on due notice to the board within thirty (30) days after notice of the license being suspended, revoked or renewal denied" at the end of

the section; deleted a former subsection (2) providing for appeal from the board's final decision (see parent volume); and made minor changes in punctuation and phraseology.

The 1977 amendment inserted "opportunity for"; deleted "if requested by the applicant" from the end of the section; and made a minor change in phraseology.

66-3023. Repealed.**Repeal**

Section 66-3023 (Sec. 23, Ch. 204, L. 1969), relating to review of a board deci-

sion by the district court, was repealed by Sec. 363, Ch. 350, Laws of 1974.

CHAPTER 31—NURSING HOME ADMINISTRATORS**Section**

- 66-3101. Definitions.
- 66-3102. [Transferred.]
- 66-3103. Qualifications for licensure.
- 66-3104. Registration and licensing function.
- 66-3105. Fees.
- 66-3106. Deposit of fees.
- 66-3107. Organization and compensation of board.
- 66-3109. Duties of the board.
- 66-3110. Renewal of registration and license.
- 66-3111. Reciprocity.
- 66-3112. Misdemeanor.

66-3101. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of nursing home administrators, provided for in section 82A-1602.17.

(2) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility, and whether his functions and duties are shared with one or more individuals.

(3) "Long-term care facility" means any skilled nursing facility, nursing home or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(4) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator, and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974.

skilled nursing facility, nursing home or intermediate care facility — A as defined" near the beginning of subdivision (c) [now subdivision (3)] for "any institution or facility defined as such"; added subdivision (d) [now subdivision (4)]; and made minor changes in phraseology.

Amendments

The 1973 amendment corrected the names of the board of administrators and of the department of health and environmental sciences; substituted references to long-term care facilities for references to extended care facilities and nursing homes throughout the section; substituted "any

The 1974 amendment substituted "provided for in section 82A-1602" in subdivision (1) for "hereinafter created"; added subdivision (5); and made minor changes in style, punctuation and phraseology.

66-3102. [Transferred.]**Compiler's Notes**

Section 306, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.17.

66-3103. Qualifications for licensure. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless:

(a) He is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; and

(b) Has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities; laws governing the operation of long-term care facilities and the protection of the interests of patients; and the elements of good nursing home administration; or have presented evidence satisfactorily to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a long-term care facility; and

(c) Has passed an examination designed to test for competence in the subject matters referred to in subsection (b).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974.

Amendments

The 1971 amendment deleted "at least twenty-one (21) years of age" from subdivision (a).

The 1973 amendment inserted references to registration in two places in the preliminary paragraph; added to subdivision (a) the requirement for a high-school diploma or equivalent; substituted ref-

erences to long-term care facilities for references to nursing homes in three places in subdivision (b); deleted from the final proviso three temporary and obsolete sentences relating to temporary waivers for administrators serving before the date of the act; and made minor changes in phraseology.

The 1974 amendment substituted "department" for "board" at the beginning of subsection (1); deleted "administered by the board" in subdivision (1)(c) after "examination"; and made minor changes in style, punctuation and phraseology.

66-3104. Registration and licensing function. (1) The department shall register and license nursing home administrators under the rules adopted by the board. A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this act or any other laws or rules relating to the proper administration and management of a long-term care facility. Denial of issuance or renewal, suspension, or revocation under this act is subject to review by the board on the timely written request for review within thirty (30) days.

(2) If the board determines that preliminary qualifications set forth in 66-3103 (1) and (2), will have been met before the next examination it may authorize the department to issue a temporary permit for a period of one hundred eighty (180) days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974.

Amendments

The 1973 amendment inserted references to registration in the first and second

sentences in subsection (1); substituted "long-term care facility" for "nursing home" at the end of the second sentence in subsection (1); substituted "will have been met before the next examination" for "have been met before examination" in the first sentence of subsection (2); substituted "the scores of the next subsequent examination are announced" at the end of the first sentence of subsection

(2) for "the date of the next subsequent examination, whichever is earlier"; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "board" in subsection (1); substituted "66-3103 (1) and (2)" in subsection (2) for "66-3103 (a) and (b)"; inserted "authorize the department to" in subsection (2); and made minor changes in style, punctuation and phraseology.

66-3105. Fees. (a) and (b). * * * [Same as parent volume.]

(c) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount of not more than twenty-five dollars (\$25). An inactive registration shall expire on December 31, in the year for which it is issued, and shall be renewable annually upon timely payment of the inactive registration fee.

(d) The fee for issuing a duplicate license shall be ten dollars (\$10).

History: En. Sec. 5, Ch. 363, L. 1969;
amd. Sec. 5, Ch. 483, L. 1973.

Amendments

The 1973 amendment added subsections (c) and (d).

66-3106. Deposit of fees. Fees collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6). This fund may be used to pay the compensation and expenses of members of the board, and other expenses necessary to administer this act.

History: En. Sec. 6, Ch. 363, L. 1969;
amd. Sec. 309, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "by the department" in the first sentence; deleted "monthly to the state treasurer, who shall keep the same in a special account to be known as the state board of examiners for nursing home administrators' account" in

the first sentence after "deposited"; substituted "board" in the first sentence for "state department of health"; deleted "in addition to other moneys appropriated to carry out this act" in the first sentence after "board"; added "subject to section 82A-1603(6)" at the end of the first sentence; deleted "for the board" in the second sentence before "to administer"; and made minor changes in phraseology.

66-3107. Organization and compensation of board. The board shall elect from its membership a chairman, vice-chairman and secretary-treasurer, and shall adopt rules and regulations to govern its proceedings. As compensation for his services, each member shall receive twenty-five dollars (\$25) a day, in addition to expenses, for each day of actual service in the performance of his duties. All members shall be allowed travel expenses as provided for in sections 59-538, 595-539 [59-539], and 59-801, and living expenses, as may be approved by the board.

History: En. Sec. 7, Ch. 363, L. 1969;
amd. Sec. 45, Ch. 439, L. 1975.

Amendments

The 1975 amendment substituted "travel expenses as provided for in sections 59-538, 595-539 [59-539], and 59-801" for "necessary travel"; and deleted from the end of the section "which shall be payable in the same manner as travel expense of other state officials."

Compiler's Notes

The compiler has inserted the bracketed reference to section 59-539 to correct an apparent error.

66-3109. Duties of the board. The board shall:

(1) Develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

(2) Develop and apply appropriate techniques, including examination and investigations, for determining whether individuals meet the standards.

(3) Authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards, and for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards. The board may, in its discretion, defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed, resulting in the closure of a long-term care facility.

(4) Establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards.

(5) On receipt of a written and signed complaint, an investigation of the matter contained in the complaint shall be initiated, subject to sections 82A-1603 and 82A-1604. At its next meeting, the complaint shall be presented to the board together with the report of investigation and recommendations and on this basis, the board shall determine whether to bring charges and provide for a hearing.

(6) Conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators.

(7) Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this act, and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state. Instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this act.

(8) Prescribe or approve continuing education courses.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974.

Amendments

The 1973 amendment inserted references to registration in subdivisions (a), (c) and (d); substituted "long-term care

facility" for "nursing home" at the end of subdivision (c); added subdivision (h); and made minor changes in phraseology and punctuation.

The 1974 amendment redesignated subdivisions (a) through (h) as (1) through (8); inserted "Authorize the department to" at the beginning of subdivision (3);

deleted "by the board" in the first sentence of subdivision (3) after "previously issued"; added "subject to sections 82A-1603

and 82A-1604" at the end of the first sentence of subdivision (5); and made minor changes in punctuation and phraseology.

66-3110. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year, prior to the expiration of his currently valid registration and license on December 31. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board, however, if the board finds after due notice and hearing, that the applicant has acted or failed to act in such a manner, or under circumstances, as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973.

to registration; inserted the proviso relating to continuing education; and made minor changes in phraseology.

Amendments

The 1973 amendment inserted references

66-3111. Reciprocity. The department may issue at the board's discretion a nursing home administrator's license, without examination, to a person who holds a current license as a nursing home administrator from another jurisdiction, if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent of those prevailing in this state, and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974.

partment" for "board" at the beginning of the section; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

66-3112. Misdemeanor. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this act. A person who violates the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973.

in the middle of the first sentence; and added the second sentence.

Amendments

The 1973 amendment deleted "and constitute a misdemeanor" following "It shall be unlawful" at the beginning of the first sentence; inserted "registration and"

Repealing Clause

Section 9 of Ch. 483, Laws 1973 read "Section 66-3113, R. C. M. 1947, is repealed."

66-3113. Repealed.

Repeal

Section 66-3113 (Sec. 13, Ch. 363, L.

1969), relating to local license taxes, was repealed by Sec. 9, Ch. 483, Laws 1973.

66-3114. Repealed.

Repeal board order or decision, was repealed by
 Section 66-3114 (Sec. 15, Ch. 363, L. Sec. 363, Ch. 350, Laws of 1974.
 1969), relating to judicial review of a

CHAPTER 32—PSYCHOLOGISTS—LICENSING AND REGULATION**Section**

- 66-3201. **Legislative finding and purpose.**
- 66-3202. **Definitions.**
- 66-3203. **License required to practice psychology—exempt activities.**
- 66-3204. **[Transferred.]**
- 66-3205. **Duties of board.**
- 66-3206. **Examinations and issuance of license—expiration and renewal—publication of list of psychologists.**
- 66-3207. **Additional powers and duties of board.**
- 66-3208. **Qualifications and requirements for licensure—reciprocity.**
- 66-3209. **Grounds for refusal or revocation of license—hearing.**
- 66-3211. **Fees.**
- 66-3212. **Confidential relationship between psychologist and client.**
- 66-3213. **Penalties for violation of act.**
- 66-3214. **Injunction of unlawful practice—restrictions on scope of practice.**

66-3201. Legislative finding and purpose. The legislative assembly finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971.

Title of Act

An act providing for the licensing and regulation of persons in Montana repre-

sented themselves as psychologists, and creating a state board of psychologist examiners, prescribing its powers and duties, and providing penalties for violations.

66-3202. Definitions. Unless the context requires otherwise, in this act:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the Northwest Association of Secondary and Higher Schools.

(2) "Board" means the board of psychologists, provided for in section 82A-1602.27.

(3) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words psychologist, psychological, psychologic, or psychology and offers to render or renders psychological services defined in subsection (4) of this section to individuals, groups, corporations, or the public for compensation or fee.

(4) "Practice of psychology" means the application of principles, methods and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, motions, and interpersonal relationship; the methods and procedures of interviewing, counseling, and behavior modification including psychotherapeutic techniques and hypnosis; and constructing, administering, and inter-

preting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation.

(5) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 2, Ch. 73, L. 1971;
amd. Sec. 312, Ch. 350, L. 1974.

chologist examiners" and added "provided for in section 82A-1602.27" in subdivision (2); added subdivision (5); and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "board of psychologists" for "state board of psy-

66-3203. License required to practice psychology—exempt activities.

(1) A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this act.

(2) This act does not prevent:

(a) Qualified members of other professions such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training and the codes of ethics of their respective professions if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist."

(b) The activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency, or of other political subdivisions, or an educational or charitable institution in so far as these activities and services are a part of the duties of his office or position with the agency or institution.

(c) The activities and services of a student, intern, or resident in psychology, pursuing a course of study at an accredited university or college, or working in a generally recognized training center, if these activities and services constitute a part of his supervised course of study.

(d) The activities and services of a person who is not a resident of this state, in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed in the aggregate more than sixty (60) days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed ten (10) days in a calendar year.

(e) A person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state, and who has applied for a license in this state, pending disposition of his application.

(f) The use of the term "social psychologist" by a person who:

(i) Has been graduated with a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(ii) Has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(iii) Has filed with the department a statement of facts demonstrating his compliance with this subdivision.

(g) The offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment.

(h) Activities of a psychological nature on the part of persons who are salaried employees of accredited academic institutions, governmental agencies, research laboratories, and business corporations, if these employees are performing the duties for which they are employed by the organizations, and within the confines of the organization.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974.

Amendments

The 1974 amendment deleted "After Jan-

uary 1, 1972" at the beginning of subsection (1); substituted "department" for "board" in subsection (2); and made minor changes in punctuation and phraseology.

66-3204. [Transferred.]

Compiler's Notes

Section 314, Ch. 350, Laws of 1974 renumbered this section as sec. 82A-1602.27.

66-3205. Duties of board. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. The department shall keep a record of the board's proceedings. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members.

(2) Each board member shall receive travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incidental to board meetings.

(3) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(4) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(5) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977.

Amendments

The 1974 amendment redesignated the subsections; substituted "department" in subsection (1) for "secretary of the board"; deleted former subsection (2) which read "The board may employ such other persons as it deems necessary or desirable to carry out the provisions of this act, all of whom shall receive such compensation as may be fixed in the budget from time to time"; deleted "as provided

for in the statutes" at the end of present subsection (2); deleted "and which are not inconsistent with the constitution or the laws of this state" at the end of subsection (3); deleted former subsection (5) which read "The board shall prepare a report to the governor as required by law"; and made minor changes in phraseology.

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (2) for "actual and necessary traveling and subsistence expenses"; and made a minor change in punctuation.

66-3206. Examinations and issuance of license—expiration and renewal—publication of list of psychologists. (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to section 82A-1603. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be re-examined at subsequent examination on the payment of another examination fee. An applicant who fails two (2) successive examinations may apply for re-examination after two (2) years of additional professional experience or training.

(3) The department shall issue a license to each person who meets the requirements for licensure as prescribed in this act. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

(4) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this act relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least one (1) month before the expiration of the license.

(5) Renewal may be made during the sixty (60) days prior to the expiration date by application. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased ten per cent (10%) for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of one (1) year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) The department shall publish yearly a list of psychologists licensed under this act. This list shall contain names and addresses and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this act, place a copy on file in the secretary of state's office, and furnish copies to the public, on request.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "board" throughout this section; added "subject to section 82A-1603" to the end of the first sentence in subsection (1); and made minor changes in phraseology.

66-3207. Additional powers and duties of board. (1) In addition to the other powers and duties set forth, the board may:

(a) Revoke and suspend licenses.

(b) Conduct hearings upon complaints concerning persons licensed under this act.

(c) Cause the prosecution and enjoinder of all persons violating this act, by the complaint of its secretary signed with the county attorney, in

the county where the violation took place, and incur necessary expenses therefor.

(d) Study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: En. Sec. 7, Ch. 73, L. 1971.

66-3208. Qualifications and requirements for licensure—reciprocity. (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) Is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) Is at least eighteen (18) years of age;

(c) Is of good moral character;

(d) Has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program;

(e) Has completed at the time of application a minimum of two (2) years of experience in the practice, research, or teaching of psychology. One (1) year of this experience shall be post-doctoral.

(3) A license without examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this act, or to a psychologist who is a diplomate in good standing of the American board of professional psychology.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974.

Amendments

The 1973 amendment reduced the age specified in subdivision (2) (b) from twenty-one to eighteen years.

The 1974 amendment deleted "Prior to January 1, 1973" at the beginning of subsection (2); inserted "passes the prescribed examination" in subsection (2); deleted former subsection (3) which read "After January 1, 1973, all applicants must meet the requirements set forth in subsection (2) of this section and shall pass an examination administered by the board"; de-

leted former subsection (4) which read "Prior to January 1, 1973, a license may be issued to an individual who has been a resident of the state for at least one (1) year and who holds a master's degree from an accredited college or university based on a program which is primarily psychological, and in addition has had five (5) years of professional experience satisfactory to the board, provided he has met the requirements of paragraphs (a), (b) and (c) of subsection (2) of this section"; redesignated former subsection (5) as subsection (3); deleted "by the board" near the beginning of subsection (3) after "issued"; and made minor changes in punctuation and phraseology.

66-3209. Grounds for refusal or revocation of license—hearing. (1) A license applied for, or issued under this act, may be refused or revoked by the board on proof that the person to whom the license was issued:

(a) Has been convicted of a felony;

(b) Has been guilty of fraud or deceit in securing the license or a renewal; or

(c) Is using a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(d) Has been guilty of unprofessional conduct as defined by the code of ethics published by the American Psychological Association.

(2) The board may not revoke or refuse to issue or renew a license for any cause, other than failure to pay fees, unless the person is given notice and opportunity for a hearing before the board.

History: En. Sec. 9, Ch. 73, L. 1971; **Amendments**
amd. Sec. 318, Ch. 350, L. 1974. The 1974 amendment added subsection (2); and made minor changes in punctuation and phraseology.

66-3210. Repealed.

Repeal refusal or revocation of a license, and the
Section 66-3210 (Sec. 10, Ch. 73, L. 1971), relating to notice and hearing upon procedure for judicial relief, was repealed by Sec. 363, Ch. 350, Laws of 1974.

66-3211. Fees. (1) The department shall collect the following fees, none of which is refundable:

(a) Application fee—twenty-five dollars (\$25) to fifty dollars (\$50)

(b) Examination fee—an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board

(c) Certificate fee—ten dollars (\$10)

(d) Renewal fee—twenty dollars (\$20) to fifty dollars (\$50)

The board may set the application fee and the annual renewal fee annually within the above limits.

(2) The initial certificate fee shall be prorated as follows:

(a) If the certificate is issued between January 2 and March 31.....
ten dollars (\$10)

(b) If the certificate is issued between April 1 and June 30.....
seven dollars and fifty cents (\$7.50)

(c) If the certificate is issued between July 1 and September 30.....
five dollars (\$5)

(d) If the certificate is issued between October 1 and January 1.....
two dollars and fifty cents (\$2.50)

(3) Renewal certificates shall be secured annually and dated January 2.

(4) Fees received by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6).

History: En. Sec. 11, Ch. 73, L. 1971; **Compiler's Notes**
amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, This section was amended twice in 1974,
Ch. 350, L. 1974. once by Ch. 59, and once by Ch. 350.
Neither amendatory act mentioned the

other, but they almost entirely incorporated each other's changes. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Both Chapters 59 and 350, Laws of 1974, substituted "department" for "board" near the beginning of subsections (1) and (4); substituted "Fees" at the beginning of

subsection (4) for "All moneys"; deleted "state treasury to the credit of" in subsection (4) after "deposited in the"; added "subject to section 82A-1603(6)" to the end of subsection (4); and made minor changes in style, punctuation and phraseology.

Chapter 59, Laws of 1974, substituted the minimum and maximum fees in subdivision (1)(a) for a fixed \$25 fee; and substituted the examination fee description in subdivision (1)(b) for a \$10 fee.

66-3212. Confidential relationship between psychologist and client.

(1) The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in this act or any other shall be construed to require such privileged communications to be disclosed.

History: En. Sec. 12, Ch. 73, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

66-3213. Penalties for violation of act. (1) Any person who violates any of the provisions of this act shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or by both.

History: En. Sec. 13, Ch. 73, L. 1971.

Compiler's Notes

This section as enacted contained no subsection (2).

66-3214. Injunction of unlawful practice—restrictions on scope of practice. (1) The practice of psychology in any way other than as defined in this act may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

(2) Nothing in this act shall be construed as permitting psychologists to prescribe drugs, perform surgery or administer electro-convulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971.

Separability Clause

Section 15 of Ch. 73, Laws 1971 read: "(1) If any provision of this act, or the application thereof to any person or circumstances is held to be invalid, such in-

validity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

CHAPTER 33—PRIVATE INVESTIGATORS AND PRIVATE PATROL OPERATORS

Section

- 66-3301. Definitions.
- 66-3302. Duty of director.
- 66-3303. Powers of director.
- 66-3304. Practice without license prohibited.
- 66-3305. Scope of regulated investigators.
- 66-3306. Exemptions.
- 66-3307. License—application.
- 66-3308. Contents of application.
- 66-3309. License—criteria.
- 66-3310. License—written examination.
- 66-3311. Denial of license application—hearing.
- 66-3312. Manager of a licensee.
- 66-3313. Temporary operation without individual licensee.
- 66-3314. Form of license.
- 66-3315. License—posting.
- 66-3316. License—identification card.
- 66-3317. Change of names or addresses.
- 66-3318. Responsibility of licensee.
- 66-3319. Confidentiality of information.
- 66-3320. Employee records.
- 66-3321. Licensee advertising.
- 66-3327. Suspension or revocation.
- 66-3328. Violation as misdemeanor.
- 66-3329. License—expiration and renewal.
- 66-3330. Fee schedule—earmarked revenue fund—purpose for which funds may be expended.
- 66-3331. Severability.

66-3301. Definitions. As used in this act:

- (1) “Director” means the director of the department of professional and occupational licensing.
- (2) “Department” means the department of professional and occupational licensing.
- (3) “Person” includes any individual, firm, company, association, organization, partnership, and corporation.
- (4) “Licensee” means a person licensed under this act and includes, but is not limited to, private investigator and private patrol operator.
- (5) “Manager” means the individual under whose direction, control, charge, or management the business of a licensee is operated.

History: En. 66-3301 by Sec. 1, Ch. 234, L. 1974. ulating private investigators and private patrol operators and to safeguard the interests of the public.

Title of Act

An act to provide for licensing and reg-

66-3302. Duty of director. The director shall administer and enforce the provisions of this act.

History: En. 66-3302 by Sec. 2, Ch. 234, L. 1974.

66-3303. Powers of director. The director may adopt and enforce reasonable rules:

- (1) classifying licensees according to the type of business regulated by this act in which they are engaged, including but not limited to private investigators and private patrol operators, and limiting the field and scope

of the operations of a licensee to those in which he is classified and qualified to engage;

(2) fixing the qualifications of licensees, in addition to those prescribed in this act, necessary to promote and protect the public welfare; and

(3) carrying out generally the provisions of this act.

History: En. 66-3303 by Sec. 3, Ch. 234,
L. 1974.

66-3304. Practice without license prohibited. No person shall engage in a business regulated by this act unless he is licensed under this act; and no person shall falsely represent that he is employed by a licensee.

History: En. 66-3304 by Sec. 4, Ch. 234,
L. 1974.

66-3305. Scope of regulated investigators. (1) A private investigator within the meaning of this act is a person other than an insurance adjuster who, for any consideration whatsoever engages in business or accepts employment to furnish, or agrees to make, or makes, any investigation for the purpose of obtaining, information with reference to:

Crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America; the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person; the location, disposition, or recovery of lost or stolen property; the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer, or investigating committee.

(2) A private patrol operator, or operator of a private patrol service, within the meaning of this act is a person who, for any consideration whatsoever: Agrees to furnish, or furnishes, a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or performs the service of such watchman, guard, patrolman, or other person, for any of said purposes.

(3) A person licensed as a private patrol operator only may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property, or any other thing enumerated in this section, which he has been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234,
L. 1974.

66-3306. Exemptions. This act does not apply to:

(1) a person employed exclusively and regularly by one (1) employer in connection with the affairs of such employer only and where there exists an employer-employee relationship;

(2) an officer or employee of the United States of America, or of this state or a political subdivision thereof, while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons;

(4) a charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit;

(5) an attorney at law in performing his duties as such attorney at law;

(6) a collection agency or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof; or

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

History: En. 66-3306 by Sec. 6, Ch. 234,
L. 1974.

66-3307. License—application. An application for a license under this act shall be on a form prescribed by the director and accompanied by the application fee provided by this act.

History: En. 66-3307 by Sec. 7, Ch. 234,
L. 1974.

66-3308. Contents of application. An application shall be verified and shall include:

(1) the full name and business address of the applicant;

(2) the name under which applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification or classifications under which the applicant desires to be qualified;

(5) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors, and its manager;

(6) two (2) recent photographs of the applicant, of a type prescribed by the director, and two (2) classifiable sets of his fingerprints;

(7) a verified statement of his experience qualifications; and

(8) such other information, evidence, statements, or documents as may be required by the director.

History: En. 66-3308 by Sec. 8, Ch. 234,
L. 1974.

66-3309. License—criteria. Before an application for a license is granted, the applicant or his manager, shall meet all of the following:

- (1) be at least eighteen (18) years of age;
- (2) be a citizen of the United States and a resident of the state of Montana;
- (3) be of good moral character and temperate habits; and
- (4) comply with such other qualifications concerning training, education or experience as the director may fix by rule.

History: En. 66-3309 by Sec. 9, Ch. 234,
L. 1974.

66-3310. License—written examination. The director shall require an applicant, or his manager, to demonstrate his qualifications by a written examination.

History: En. 66-3310 by Sec. 10, Ch. 234,
L. 1974.

66-3311. Denial of license application—hearing. If a license is denied, the applicant for such license, or for renewal thereof, may request a hearing within thirty (30) days after notice of denial. Such hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of professional and occupational licensing.

History: En. 66-3311 by Sec. 11, Ch. 234,
L. 1974.

66-3312. Manager of a licensee. (1) The business of each licensee shall be operated under the direction, control, charge, or management, in this state, of either the licensee or a manager, but no licensee shall be required to employ more than one (1) manager.

(2) No person shall act as a manager of a licensee until he has complied with each of the following:

(a) demonstrated his qualifications by a written examination, if required by the director; and

(b) made a satisfactory showing to the director that he has the qualifications prescribed by section 9 [66-3309].

History: En. 66-3312 by Sec. 12, Ch. 234,
L. 1974.

66-3313. Temporary operation without individual licensee. Where the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the licensee for any reason whatever, the business may be carried on for such temporary period and under such terms and conditions as the director shall provide by regulation.

History: En. 66-3313 by Sec. 13, Ch. 234,
L. 1974.

66-3314. Form of license. The license, when issued, shall be in such form as may be determined by the director and shall include:

- (1) the name of the licensee;

- (2) the name under which the licensee is to operate;
- (3) the number and date of the license.

History: En. 66-3314 by Sec. 14, Ch. 234,
L. 1974.

66-3315. License—posting. The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

History: En. 66-3315 by Sec. 15, Ch. 234,
L. 1974.

66-3316. License—identification card. Upon the issuance of a license, a pocket card of such size, design, and content as may be determined by the director shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed. When any person to whom a card is issued terminates his position, office or association with the licensee, the card shall be surrendered to the licensee and within five (5) days thereafter shall be mailed or delivered by the licensee to the department for cancellation.

History: En. 66-3316 by Sec. 16, Ch. 234,
L. 1974.

66-3317. Change of names or addresses. A licensee shall, within thirty (30) days after such change, notify the department of any and all changes of his address, of the name under which he does business, and of any change in its officers or partners.

History: En. 66-3317 by Sec. 17, Ch. 234,
L. 1974.

66-3318. Responsibility of licensee. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: En. 66-3318 by Sec. 18, Ch. 234,
L. 1974.

66-3319. Confidentiality of information. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a private investigator may use a badge in connection with the official activities of the licensee's business.

(5) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(6) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

(7) No private patrol licensee or officer, director, partner, manager, or employee of a private patrol licensee may use a badge except while engaged in guard or patrol work and while wearing a uniform.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977.

Amendments

The 1977 amendment substituted "county attorney" for "district attorney" in subsection (1); and made minor changes in phraseology and punctuation.

66-3320. Employee records. Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the director.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974.

66-3321. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the department.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974.

66-3322 to 66-3326. Repealed.

Repeal

Sections 66-3322 to 66-3326 (Secs. 22 to 26, Ch. 234, L. 1974), relating to bonds of

private investigators, were repealed by Sec. 4, Ch. 541, Laws 1977.

66-3327. Suspension or revocation. The director may suspend or revoke a license issued under this act if he determines that the licensee or his manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager, has:

(1) made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license;

(2) violated any provisions of this act;

(3) violated any rule of the director adopted pursuant to the authority contained in this act;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon, and as a result of such conviction is under state supervision;

(5) impersonated, or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America, or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license was expired which would be cause for the suspension or revocation of a license, or grounds for the denial of an application for a license;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties; or

(8) knowingly violated, or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

History: En. 66-3327 by Sec. 27, Ch. 234,
L. 1974.

66-3328. Violation as misdemeanor. Any person who violates any of the provisions of this act is guilty of a misdemeanor punishable by fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

History: En. 66-3328 by Sec. 28, Ch. 234,
L. 1974.

66-3329. License—expiration and renewal. Licenses issued under this act, and the pocket cards issued pursuant thereto, shall expire at 12 midnight on June 30 of each year if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the director, and pay the renewal fee prescribed by this act.

History: En. 66-3329 by Sec. 29, Ch. 234,
L. 1974.

66-3330. Fee schedule—earmarked revenue fund—purpose for which funds may be expended. (1) The amount of fees prescribed by this act, unless otherwise fixed, is that fixed in the following schedule:

(a) An application for an original license in any classification shall be accompanied by an investigation fee of twenty-five dollars (\$25).

(b) The annual fee for an original license or renewal thereof shall be fixed by the director but shall not exceed fifty dollars (\$50).

(2) Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter.

History: En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975.

section (1) designation; redesignated former subdivisions (1) and (2) as subdivisions (1)(a) and (1)(b); and added subsection (2).

Amendments

The 1975 amendment inserted the sub-

66-3331. Severability. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of

its applications, the part remains in effect in all valid applications that are severable from the invalid application.

History: En. 66-3331 by Sec. 31, Ch. 234,
L. 1974.

CHAPTER 34—ACUPUNCTURE PRACTICE ACT

Section

- 66-3401. Citation of act.
- 66-3402. Legislative finding and purpose.
- 66-3403. Definitions.
- 66-3404. License required.
- 66-3405. Powers and duties of board.
- 66-3406. Application for examination—fee—requirements.
- 66-3407. Examination—scope of examination—retention and inspection of examination papers—reexamination.
- 66-3408. License—fee.
- 66-3409. Reciprocity.
- 66-3410. Term of license—renewal—fee—notice—cancellation.
- 66-3411. Refusal to issue, suspension, revocation of license—probation—notice—hearing—reinstatement.
- 66-3412. Judicial review of board decisions.
- 66-3413. Deposit of fees.
- 66-3414. Enjoining unlawful practice.
- 66-3415. Acupuncture examinations for licensed doctors of medicine, osteopathy, chiropractic, dentistry and podiatry.
- 66-3416. Violation of act—penalty.
- 66-3417. Severability clause.

66-3401. Citation of act. This act shall be known and may be cited as the “Acupuncture Practice Act of 1974.”

History: En. 66-3401 by Sec. 1, Ch. 317,
L. 1974.

Title of Act

An act to provide for the regulation and licensing of persons practicing acupuncture in Montana; and providing penalties.

66-3402. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317,
L. 1974.

66-3403. Definitions. As used in this act:

(1) The term “board” means the Montana state board of medical examiners.

(2) The term “acupuncture” means the treatment of the human body by means of mechanical, thermal or electrical stimulation effected by the insertion of solid needles.

(3) The term “acupuncturist” means a natural person licensed by the Montana state board of medical examiners to practice acupuncture.

(4) The term "school of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the Montana state board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317,
L. 1974.

66-3404. License required. From and after the effective date of this act no person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this act.

History: En. 66-3404, by Sec. 4, Ch. 317,
L. 1974.

66-3405. Powers and duties of board. In addition to all other powers and duties conferred and imposed upon the board by this act, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, (82-4201 to 82-4225) rules and regulations which it determines to be necessary to carry out the provisions of this act;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this act;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: En. 66-3405 by Sec. 5, Ch. 317,
L. 1974.

66-3406. Application for examination—fee—requirements. (1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board upon the forms and in the manner as prescribed by the board, at least thirty (30) days before the date set by the board for the commencement of the examination. An examination fee of fifty dollars (\$50) shall accompany the application.

(2) A person making application shall furnish the board evidence that he:

(a) is at least eighteen (18) years of age;

(b) is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(c) is of good moral character, as determined by the board; and

(d) is the graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board.

History: En. 66-3406 by Sec. 6, Ch. 317,
L. 1974.

66-3407. Examination—scope of examination—retention and inspection of examination papers—reexamination. (1) Any applicant meeting the requirements of this act shall be admitted to an assembled examination to be conducted by the board. An examination shall be held at least twice a year. The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice acupuncture. The examination shall be in writing, in so far as the board shall deem practicable, and shall cover such subjects as prescribed in the curriculum and taught in the schools which offer courses leading to the degree of doctor of acupuncture, master of acupuncture, master acupuncturist, or its equivalent. Demonstration of the applicant's skill in the practice of acupuncture may also be required.

(2) Examination papers of any applicant shall be retained two (2) years by the secretary of the board and may then be destroyed. While retained the examination papers shall be open to inspection only by board members, the applicant or by some person appointed by the applicant to examine them, or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(3) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of twenty-five dollars (\$25) for each examination.

History: En. 66-3407 by Sec. 7, Ch. 317,
L. 1974.

66-3408. License—fee. All applicants successfully passing the examination required by this act shall be registered as licensed acupuncturists in the board register and, upon the payment of a twenty dollar (\$20) license fee shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: En. 66-3408 by Sec. 8, Ch. 317,
L. 1974.

66-3409. Reciprocity. A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this act, upon payment of the license fee of twenty dollars (\$20) as herein provided.

History: En. 66-3409 by Sec. 9, Ch. 317,
L. 1974.

66-3410. Term of license—renewal—fee—notice—cancellation. (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed upon request of the licensee without examination. The request for renewal shall be on forms prescribed by the board

and accompanied by a renewal fee of twenty dollars (\$20). The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license. Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

(2) On or before December 1 of each calendar year the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board, unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee of five dollars (\$5), shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this act, and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided, may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee of five dollars (\$5) for each year following the canceling of the license.

History: En. 66-3410 by Sec. 10, Ch. 317,
L. 1974.

66-3411. Refusal to issue, suspension, revocation of license—probation—notice—hearing—reinstatement. (1) The board may refuse to issue or may suspend or revoke a license issued pursuant to this chapter for any one or any combination of the following causes:

(a) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance as shown by a certified copy of record of the court, subject to Title 66, chapter 40;

(b) being adjudicated incompetent or seriously mentally ill;

(c) sustaining a physical or mental disability which renders further practice dangerous;

(d) habitual drunkenness or habitual addiction to the use of a controlled substance;

(e) gross malpractice;

(f) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public or which is unbecoming a person licensed to practice under this chapter;

(g) obtaining or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(h) advertising by means of knowingly false or deceptive statement;

(i) advertising, practicing, or attempting to practice under a name other than one's own;

(j) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this chapter; or

(k) violating or attempting to violate or assisting or abetting the violation of or conspiring to violate any provision of this chapter.

(2) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state charging him with the commission of any of the offenses set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the secretary shall mail a copy to the person so accused at his last address of record with the board, together with a written notice of the time and place of a hearing thereon advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice. The contested case procedures of the Montana Administrative Procedure Act apply to the notice and hearing required by this section, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(3) At the time and place fixed for a hearing before the board as provided in subsection (2) of this section or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall after consideration adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in subsection (1) of this section do not exist with reference to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board finds that the conditions referred to in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion considers proper.

(4) The secretary of the board in all cases of revocation, suspension, or probation shall enter in its records the facts of the action and of any subsequent action of the board with respect thereto.

(5) Upon the expiration of the term of suspension, the licensee shall be reinstated by the board, provided the licensee furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as herein provided, which revocation is final and absolute.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977.

for "insane" in subdivision (1)(b); substituted "notice" for "citation" near the middle of the second sentence of subsection (2); deleted "if not" before "restored to good health" in the second sentence of subsection (5); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment added "subject to Title 66, chapter 40" to subdivision (1) (a); substituted "seriously mentally ill"

66-3412. Judicial review of board decisions. Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act (82-4201 to 82-4225).

History: En. 66-3412 by Sec. 12, Ch. 317, L. 1974.

66-3413. Deposit of fees. All moneys received under this act shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this act.

History: En. 66-3413 by Sec. 13, Ch. 317, L. 1974.

66-3414. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this act may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317, L. 1974.

66-3415. Acupuncture examinations for licensed doctors of medicine, osteopathy, chiropractic, dentistry and podiatry. Nothing in this act shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this act.

History: En. 66-3415 by Sec. 15, Ch. 317,
L. 1974.

66-3416. Violation of act—penalty. Any person who violates any of the provisions of this act or the rules and regulations of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

History: En. 66-3416 by Sec. 16, Ch. 317,
L. 1974.

66-3417. Severability clause. If any provision of this act, or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: En. 66-3417 by Sec. 17, Ch. 317,
L. 1974.

CHAPTER 35—HEATING, VENTILATION, AND AIR CONDITIONING ACT

Section

- 66-3501. Short title.
- 66-3502. Purpose.
- 66-3503. Definitions.
- 66-3504. Powers and duties of board.
- 66-3505. Deposit of fees.
- 66-3506. Examination of applicant for license.
- 66-3507. Persons exempt from examination.
- 66-3508. Requirements for licensure.
- 66-3509. License fees—examination fees.
- 66-3511. Display of license.
- 66-3512. Revocation or suspension of license.
- 66-3513. Unlawful conduct.
- 66-3514. Penalty.
- 66-3515. Exemptions from act.

66-3501. Short title. This act is to be known and referred to as the "Heating, Ventilation, and Air Conditioning Act."

History: En. 66-3501 by Sec. 2, Ch. 504,
L. 1975.

66-3502. Purpose. It is hereby declared to be the purpose of this act to protect the people of Montana from health, life, financial, and other hazards resulting from irresponsible service methods, unethical practices, inferior installation, maintenance and repair of warm air heating, ventilation, and air conditioning systems and equipment.

History: En. 66-3502 by Sec. 3, Ch. 504,
L. 1975.

66-3503. Definitions. As used in this act:

(1) "Board" means board of warm air heating, ventilation and air conditioning, provided for in section 82A-1602.29.

(2) "Department" means the department of professional and occupational licensing.

(3) "Warm air heating, ventilation, and air conditioning work" means construction, installation, alteration, maintenance and repair of all warm air heating systems complete with warm air appliances, ducts, registers and flues with or without air filters, humidity and thermostatic controls; ventilating systems complete with blowers, ducts, plenum chambers, registers, with or without air filters, humidity and thermostatic controls; air conditioning systems, complete with air conditioning units, ducts, registers, air filters, humidity and thermostatic controls; and all equipment for air heating, ventilating, and air conditioning; blower and exhaust appliances and systems; and domestic and commercial forced air heating equipment. Warm air heating, ventilation, and air conditioning work does not include any portable heating, ventilating or air conditioning equipment, which does not become affixed to real property; and masonry fireplaces and component parts with masonry flues.

History: En. 66-3503 by Sec. 4, Ch. 504,
L. 1975.

66-3504. Powers and duties of board. In addition to all other powers and duties conferred and imposed upon the board by law, the board shall have and exercise the following powers and duties:

(1) to promulgate rules which it determines to be necessary to carry out the provisions of this act;

(2) to hear contested cases coming under the provisions of this act; and

(3) to establish how permit fees are to be collected and allocated under applicable state and local building codes.

History: En. 66-3504 by Sec. 5, Ch. 504,
L. 1975.

66-3505. Deposit of fees. Money paid for license and equipment fees under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 82A-1603(6).

History: En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977.

Amendments

The 1977 amendment substituted "fund" for "account"; and made minor changes in phraseology.

66-3506. Examination of applicant for license. An applicant for a license to engage in warm air heating, ventilation, or air conditioning work shall be examined as to his qualifications by the department, subject to section 82A-1603 (4). The department shall examine each applicant for a license, to determine his qualifications and fitness for carrying on warm air heating, ventilation, or air conditioning work, as a master or journeyman, and if the applicant successfully passes the examination prescribed by the board, then a license shall be issued to the applicant authorizing him to engage in warm air heating, ventilation, or air conditioning work as a master or journeyman in the state, subject to other provisions of this act.

History: En. 66-3506 by Sec. 7, Ch. 504,
L. 1975.

66-3507. Persons exempt from examination. Persons fulfilling the qualifications for applicants for licenses as hereinafter provided prior to July 1, 1975, and who are then actively engaged in warm air heating, ventilation, and sheet metal work, shall not be required to take an examination, but shall be issued a license by the board upon payment of the proper license fee before January 1, 1976, and upon posting a bond as herein provided in the case of a master licensee.

History: En. 66-3507 by Sec. 8, Ch. 504,
L. 1975.

66-3508. Requirements for licensure. The following requirements shall be met by applicants for a state license:

(1) Masters shall furnish evidence of five (5) years' experience in warm air heating, ventilation, and air conditioning work satisfactory to the board.

(2) Journeyman mechanics shall furnish evidence of four (4) years' experience in warm air heating, ventilation, and air conditioning work which is satisfactory to the board. This experience requirement may be fulfilled by working four (4) years in any major phase of the warm air heating, ventilation, and air conditioning business, or by completing an apprenticeship program meeting the standards set by the Montana state apprenticeship council or United States department of labor, bureau of apprenticeship, and credit towards this experience requirement shall be given for time spent in attending trade or other schools specializing in training in the warm air heating, ventilation, and air conditioning business and approved by the board.

(3) For apprentice mechanics:

(a) registration by the board and the Montana apprenticeship council as an apprentice;

(b) working under the direct and personal supervision of a duly licensed journeyman, learning the business of warm air heating, ventilation, and air conditioning; and

(c) apprentices qualifying hereunder shall be issued apprentice permits by the board.

History: En. 66-3508 by Sec. 9, Ch. 504,
L. 1975.

66-3509. License fees—examination fees. Each applicant for a master license shall pay a seventy-five dollar (\$75) application fee, and each applicant for a journeyman's license shall pay a thirty-five dollar (\$35) application fee. All licenses and renewals expire on July 1 of each year. Renewal fees shall be set annually by the board and may not exceed the application fees. Examination fees shall be set by the board but not to exceed fifty dollars (\$50) for a master examination and twenty-five dollars (\$25) for a journeyman examination.

History: En. 66-3509 by Sec. 10, Ch. 504, L. 1975.

66-3510. Repealed.

Repeal

Section 66-3510 (Sec. 11, Ch. 504, L. 1975), relating to bond of heating, ventilation, and air conditioning service workers, was repealed by Sec. 4, Ch. 541, Laws 1977.

66-3511. Display of license. The board shall issue a license of a design approved by the board to each licensee. A person licensed shall display the license in plain view in his place of business and if he is performing services away from his place of business, he shall present identification issued by the board showing his license number. Licenses are not transferable.

History: En. 66-3511 by Sec. 12, Ch. 504, L. 1975.

66-3512. Revocation or suspension of license. Any licensee who performs, or any master licensee whose associated firm performs warm air heating, ventilation, and air conditioning work in any building whatsoever, below the standards set by the applicable warm air heating, ventilation, and air conditioning code, may have his license revoked or suspended by the board. Proceedings for the revocation or suspension of a license may be commenced by the board upon its own motion, or upon motion of any person. All complaints must be in writing, verified and filed with the department. The board may deem the complaint sufficient as received or require further investigation. When a complaint is deemed sufficient by the board, it shall provide for a hearing, at a specified time and place, and the department shall cause a true copy of notice of hearing and of the complaint to be served upon the licensee at least ten (10) days before the day appointed in the order for hearing.

History: En. 66-3512 by Sec. 13, Ch. 504, L. 1975.

66-3513. Unlawful conduct. It shall be unlawful:

(1) for any person or firm to perform, or to establish a place of business to perform, or to advertise for, warm air heating, ventilation, or air conditioning work for another unless such person, or a full partner or ten per cent (10%) or more shareholder of such firm, shall have first obtained a master license hereunder, provided, that any person who is licensed as a journeyman may perform such work for a master licensee or a firm with which a master licensee is associated; and

(2) for equipment to be installed in this state unless evidence of permit fee payment is attached in the manner prescribed by the board.

History: En. 66-3513 by Sec. 14, Ch. 504, L. 1975.

66-3514. Penalty. Any person or firm convicted of violating the provisions of section 66-3513 shall be fined not less than twenty dollars (\$20) and not more than five hundred dollars (\$500) for each separate offense. A person engaged in warm air heating, ventilation, or air conditioning work after July 1, 1975, and who applies for a license prior to January 1, 1976, is not in violation of this act until his application for licensure is denied.

History: En. 66-3514 by Sec. 15, Ch. 504, L. 1975.

66-3515. Exemptions from act. The provisions of this act do not apply or affect work done:

(a) by a homeowner on either his family dwelling or outbuildings or both of them or person doing routine maintenance in his place of business or rental housing;

(b) to provide fuel or refrigeration pipelines, when lines are connected to the installation of heating, ventilating and air conditioning systems; or

(c) by railroads, smelters, underground mining operations, mills or refineries on their properties, by self or employees or other businesses doing their own routine maintenance.

History: En. 66-3515 by Sec. 16, Ch. 504, L. 1975.

CHAPTER 36—ELECTROLOGY

Section

- 66-3601. Legislative finding and purpose.
- 66-3602. Definitions.
- 66-3603. License required to practice electrology—exceptions.
- 66-3604. License—criteria.
- 66-3605. Electrology salon license required.
- 66-3606. Reciprocity.
- 66-3607. Authority to create rules—penalties.
- 66-3608. Fees—earmarked revenue fund—late renewal fee.

66-3601. Legislative finding and purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975.

Title of Act
An act authorizing the board of cosmetologists to regulate and license persons engaged in the practice of electrology and premises where electrology is practiced.

66-3602. Definitions. As used in this act:

(1) "Electrology" means the study and professional practice of removing superfluous hair by destroying the hair roots with an electrified needle.

Electrology as defined in this act shall include electrolysis and or thermolysis.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of professional and occupational licensing.

(4) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

History: En. 66-3602 by Sec. 2, Ch. 143,
L. 1975.

66-3603. License required to practice electrology—exceptions. (1) After January 1, 1976, no person may represent himself to be an electrologist or engage in the practice of electrology unless he is licensed under this act.

(2) Nothing in this act prevents:

(a) a licensed medical doctor from performing the work of an electrologist;

(b) a person employed by a federal, state, county, city, or other political subdivision, or by an educational or charitable institution from performing the work of an electrologist.

History: En. 66-3603 by Sec. 3, Ch. 143,
L. 1975.

66-3604. License—criteria. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least eighteen (18) years of age;

(b) furnish satisfactory evidence of education, instruction, training and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology, if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this act have been met.

History: En. 66-3604 by Sec. 4, Ch. 143,
L. 1975.

66-3605. Electrology salon license required. The premises in which an electrologist or electrologists may practice shall be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

History: En. 66-3605 by Sec. 5, Ch. 143,
L. 1975.

66-3606. Reciprocity. Reciprocal electrology licenses may be granted by the board where the individual has a valid license from another state and has fulfilled requirements of this profession similar to those provided in this act.

History: En. 66-3606 by Sec. 6, Ch. 143,
L. 1975.

66-3607. Authority to create rules—penalties. (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

(2) Violation of this chapter, or of the rules adopted under it is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977.

Amendments

The 1977 amendment substituted the

subsection (2) for "Penalties for violations of this act and the rules adopted under it are provided in section 66-811, R.C.M. 1947"; and made a minor change in phraseology.

66-3608. Fees—earmarked revenue fund—late renewal fee. (1) The fee for an original electrologist license shall not exceed \$50 as set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this act expire on December 31 and shall be renewed annually. Failure to renew on or before December 31 shall cause a late renewal fee of \$10 to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or moneys collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board in administration of the act.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977.

Amendments

The 1977 amendment added the last two sentences of subsection (3); and made a minor change in style.

CHAPTER 37—RADIOLOGIC TECHNOLOGISTS

Section

66-3701. Definitions.

66-3701.1. Legislative findings.

66-3702. License required—provisos.

66-3703. Board—compensation—meetings—quorum.

66-3704. Board can promulgate rules.

66-3705. Applicants—qualifications.

66-3706. Examinations—licensure.

66-3707. Licenses—permits.

66-3708. Issuance of license without examination.

66-3708.1. Licensure by demonstration of proficiency.

66-3709. Expiration of license—renewal.

66-3709.1. Replacement documents.

66-3710. Suspension of license.

66-3711. Inspections.

66-3712. Violation of act—penalty.

66-3701. Definitions. As used in this act unless the context clearly requires otherwise:

(1) "Board" means the board of radiologic technologists created by this act.

(2) "License" means an authorization, to apply X-ray radiation to persons, issued by the department of professional and occupational licensing.

(3) "Department" means the department of professional and occupational licensing.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Permit" means an authorization which may be granted by the board, to apply X-ray radiation to persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(6) "Radiologic technologist" means a person other than a licensed practitioner who applies diagnostic x-ray radiation to persons.

History: En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977. providing for administration of the act, inspections, enforcement and penalties; and providing an effective date.

Title of Act

An act providing for licensure and regulation of radiologic technologists; establishing a board of radiologic technologists;

Amendments

The 1977 amendment inserted "diagnostic" in subdivision (6).

66-3701.1. Legislative findings. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977. relating to licensure of radiologic technologists and providing an immediate effective date; amending sections 66-3701, 66-3705, 66-3706, 66-3707, 66-3708, and 66-3709, R.C.M. 1947.

Title of Act

An act to generally revise the laws re-

66-3702. License required—provisos. No person may apply X-ray radiation to a person unless licensed under this act, with the following provisos:

(1) A person licensed as a radiologic technologist may apply X-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such examinations or treatments.

(2) Licensure is not required for:

(a) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic or radiologic technology who applies X-ray radiation to persons under the direct supervision of a person licensed to prescribe such examinations or treatment;

(b) a person administering X-ray examinations related to the practice of dentistry.

(3) Nothing in this act shall be construed to limit or affect in any respect, the practice of their respective professions by duly licensed practitioners.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975.

66-3703. Board—compensation—meetings—quorum. (1) Board members may be compensated as determined by the board, but not to exceed \$25 a day, for official business. Board members shall be reimbursed for their travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incurred while on official business of the board.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business.

History: En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977.

expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (1) for "actual and necessary expenses"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "travel

66-3704. Board can promulgate rules. The board may promulgate rules necessary to carry out the provisions of this act and adjudicate contested cases under it.

History: En. 66-3704 by Sec. 5, Ch. 336, L. 1975.

66-3705. Applicants—qualifications. (1) Each applicant for licensure as a radiologic technologist other than those qualifying under 66-3708 or 66-3708.1 shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist including those qualifying under 66-3708 or 66-3708.1 shall:

- (a) be of good moral character;
- (b) be at least eighteen (18) years of age; and
- (c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977.

66-3708.1" in subsection (1); inserted "24-month" before "course" in subsection (1); inserted the introductory clause of subsection (2); designated former subdivisions (2) to (4) as subdivisions (2) (a) to (2)(c); and made minor changes in punctuation.

Amendments

The 1977 amendment designated the former introductory clause and subdivision (1) as subsection (1); inserted "other than those qualifying under 66-3708 or

66-3706. Examinations—licensure. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board but not to exceed \$50, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination.

(4) The board may accept in lieu of its own examination a certificate of the American Registry of Radiologic Technologists (ARRT) or a certificate, registration or license issued by another state whose qualifications are at least equal to those set forth in this chapter.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977.

Amendments

The 1977 amendment deleted the second sentence of subsection (1) which read

"The written portion of the examination may be taken at any time, during normal working hours, at the department of professional and occupational licensing"; and made minor changes in phraseology and style.

66-3707. Licenses—permits. (1) The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board not to exceed \$50 and has met the requirements of this chapter. Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board in administering this chapter.

(2) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated to the satisfaction of a physician specializing in radiology approved by the board the capability of performing high quality x-ray examinations without endangering public health and safety. Permits issued under provisions of this section shall specify x-ray examinations that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions for original issuance.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to uncertified persons to perform x-ray examinations when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such a person is capable of performing x-ray examinations without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions.

(5) Each radiologic technologist shall carry his license or permit while at work. The license or permit shall be displayed on request.

(6) The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977.

Amendments

The 1977 amendment inserted "a phy-

sician specializing in radiology approved by" in the first sentence of subsection (2); substituted "perform x-ray examinations" in the first sentence of subsection

(4) for "practice as radiologic technologist"; added subsection (6); and made minor changes in phraseology and style.

66-3708. Issuance of license without examination. (1) The board shall issue a license to an applicant if the applicant has been employed as a radiologic technologist for at least 5 of the 6 years immediately preceding October 9, 1976.

(2) Applications for licensure under this section must be submitted to the board no later than October 9, 1977.

History: En. 66-3708 by Sec. 9, Ch. 336, L. 1975; amd. Sec. 6, Ch. 310, L. 1977.

section (2) for a prior subdivision concerning licensing on the demonstration of proficiency; and made minor changes in style, punctuation and phraseology.

Amendments

The 1977 amendment substituted sub-

66-3708.1. Licensure by demonstration of proficiency. (1) The board shall issue a license to an applicant if:

(a) he has been employed as a radiologic technologist for at least 2 of the 3 years immediately preceding October 9, 1976, and can demonstrate proficiency by practical examination;

(b) he is a student engaged in a course of x-ray technology on October 9, 1976, subsequently completes the course, and can demonstrate proficiency to the satisfaction of the board; or

(c) he has successfully completed a 24-month course in x-ray technology within 2 years immediately preceding October 9, 1976, and can demonstrate proficiency to the satisfaction of the board.

(2) Applications for licensure under subsections (1)(a) and (1)(c) of this section must be submitted to the board no later than October 9, 1977.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977.

Amendments

The 1977 amendment substituted "or" at the end of subsection (1)(b) for "and."

66-3709. Expiration of license—renewal. (1) Licenses expire on December 31 of the first even-numbered year following the year of their issuance and on every even-numbered year thereafter.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977.

fore duly" before "licensed" near the beginning of subsection (3); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment deleted "hereto-

66-3709.1. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977. vided the act should be effective on its passage and approval. Approved April 5, 1977.

Effective Date

Section 10 of Ch. 310, Laws 1977 pro-

66-3710. Suspension of license. A license or permit may be suspended for a fixed period, or may be revoked, or such technologists may be censured, reprimanded, or otherwise disciplined as determined by the board if after a hearing before the board it is determined that the radiologic technologist:

- (1) is guilty of fraud or deceit in activities as a radiologic technologist or has been guilty of any fraud or deceit in procuring the license or permit;
- (2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;
- (3) is a habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect, or is not mentally competent;
- (4) is guilty of unethical conduct as defined by rules promulgated by the board or has been guilty of incompetence or negligence in his activities as a radiologic technologist;
- (5) has continued to perform as a radiologic technologist without obtaining a license or license renewal as required by this act.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975.

66-3711. Inspections. Inspections for compliance with the provisions of this act may be performed by:

- (1) the board of radiologic technologists;
- (2) the department of professional and occupational licensing;
- (3) the department of health and environmental sciences.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975.

66-3712. Violation of act—penalty. A person, or the employer of a person, who violates any provisions of this act or rules adopted under this act is guilty of an offense and shall be fined not to exceed five hundred dollars (\$500). Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975.

Effective Date

Section 15 of Ch. 336, Laws 1975 read "This act is effective eighteen (18) months after its passage and approval except that members of the board shall be appointed sixteen (16) months prior to such date and the board may immediately initiate such action as necessary for this act to become fully effective." Approved April 9, 1975.

Separability Clause

Section 14 of Ch. 336, Laws 1975 read "If a part of this act is invalid all valid parts that are severable from the invalid parts remain in effect. If a part of the act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 38—LANDSCAPE ARCHITECT REGISTRATION AND LICENSING ACT

Section

- 66-3801. Short title.
- 66-3802. Purpose.
- 66-3803. Definitions.
- 66-3804. Application and practice.
- 66-3805. Qualifications.
- 66-3806. Examinations.
- 66-3807. License fees—expiration—reciprocity.
- 66-3808. Exemptions.
- 66-3809. Registrant status.
- 66-3810. Qualifications for practice—seal.
- 66-3811. Disciplinary proceedings.
- 66-3812. Violations—penalties.
- 66-3813. Prosecution of violations.

66-3801. Short title. This act shall be known and cited as the “Landscape Architect Registration and Licensing Act.”

History: En. 66-3801 by Sec. 1, Ch. 476,
L. 1975.

Title of Act

An act creating the board of landscape architects; and prescribing its powers and duties.

66-3802. Purpose. The purpose of this act is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476,
L. 1975.

66-3803. Definitions. As used in this act:

(1) “Landscape architect” means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this act.

(2) “Practice of the profession of landscape architecture” means performing services in connection with the analysis or development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches or environment for structures or other improvements, natural drainage and the consideration and determination of inherent problems of the land relating to the erosion, wear and tear, blight or other hazards. This practice shall include the location and arrangement of such tangible objects and features as are incidental and necessary to the purposes outlined herein but shall not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture; and shall not include the making of land surveys or final land plats for official approval or recording.

(3) “Experience” means full-time employment as a landscape architect or doing landscape architectural work under the supervision of a registered landscape architect or a landscape architect qualified for registration in Montana. All experience is subject to approval by the board.

(4) "Education" means time spent as a student enrolled in a college or school curriculum of landscape architecture accredited by the American Society of Landscape Architects, and other college or university training the board may approve.

(5) "Training" means a period of experience and/or education of at least six (6) years as defined herein.

(6) "Board" means the board of landscape architects.

(7) "Department" means the department of professional and occupational licensing.

History: En. 66-3803 by Sec. 3, Ch. 476,
L. 1975.

66-3804. Application and practice. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this act.

History: En. 66-3804 by Sec. 4, Ch. 476,
L. 1975.

66-3805. Qualifications. Prior to being licensed as a landscape architect each applicant shall submit evidence to the board that his training includes at least six (6) years of experience and/or education as defined herein:

(1) Six (6) years of experience of grade and character satisfactory to the board shall be acceptable.

(2) One (1) academic year of education may be substituted for one (1) year of actual practical experience up to a maximum of five (5) academic years in landscape architecture. Experience during a year of education may not be applied toward the total training period of six (6) years. Each applicant shall have completed at least one (1) year's experience.

History: En. 66-3805 by Sec. 5, Ch. 476,
L. 1975.

66-3806. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect except the original board and those registered under the grandfather clause is required to establish by written and/or oral examination his competency to practice the profession of landscape architecture. The type of examinations that will be given shall be determined by the board.

History: En. 66-3806 by Sec. 6, Ch. 476,
L. 1975.

Grandfather Clause

Section 7 of Ch. 476, Laws 1975 read "At any time within one (1) year after this act becomes effective, upon applica-

tion therefor and payment of the application and certificate fee, the board shall issue a certificate of registration without oral or written examination to any practicing landscape architect of good character, who qualifies under the provisions of section 66-3805, who shall submit under

oath evidence satisfactory to the board and has had responsible charge of work that he was practicing landscape architecture of character satisfactory to the board." at the time this act became effective,

66-3807. License fees—expiration—reciprocity. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then current fee, and upon approval by the board. Any registrant, other than a properly withdrawn licensee, who fails to renew his registration within a period of sixty (60) days may be reinstated only on re-examination. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(3) All fees received under the provisions of this act shall be deposited in an earmarked revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the act, subject to section 82A-1603 (6).

(4) The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country whose requirements for licensure are substantially equivalent to the requirements of this state and which extends the same privilege of reciprocity to landscape architects from this state.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975.

66-3808. Exemptions. (1) None of the provisions of this act prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this act apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used, except that no such person shall use the title "landscape architect," "landscape architecture," or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this act.

(3) This act does not apply to architects, professional engineers, and land surveyors licensed to practice their respective professions.

(4) None of the provisions of this act shall apply to any person performing any of the services mentioned in this act upon his own property.

(5) None of the provisions of this act shall require the hiring of a landscape architect.

History: En. 66-3808 by Sec. 10, Ch. 476, L. 1975.

66-3809. Registrant status. (1) Certificates of licensing may be issued to natural persons only, but nothing contained in this chapter pre-

vents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall at the time of application exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977.

from the beginning of subsection (1); substituted "may" for "shall" near the beginning of subsection (1); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment deleted "All"

66-3810. Qualifications for practice—seal. (1) No person may use the designation "landscape architect" or "landscape architecture," or advertise any title or description tending to convey the impression that he is a landscape architect, or practicing landscape architecture, unless such person is a licensed landscape architect with the board. Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana," and such other words or figures as the board considers necessary. All drawings and title pages of specifications, prepared by such landscape architect or under the supervision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed land surveyor.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975.

66-3811. Disciplinary proceedings. The board may revoke or suspend the license of any landscape architect upon the following grounds: (1) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this act;

(2) conviction of a felony by a court of competent jurisdiction, however, the right to a revoked or suspended license is regained upon termination of state supervision over the licensee;

(3) gross incompetency;

(4) fraud or deceit in the performance of official duties;

(5) for willful violation of any of the provisions of this act or any of the rules promulgated by the board under the authority of this act.

The board may reinstate any revoked or suspended certification upon such terms as it may impose.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975.

66-3812. Violations—penalties. (1) It shall be unlawful for any person to:

(a) offer to practice or hold himself out as entitled to practice landscape architecture, unless duly licensed and registered under this act;

(b) present as his own the license of another;

(c) give false or forged evidence to the board or any member thereof in obtaining a license;

(d) falsely impersonate any other practitioner, of like or different name;

(e) otherwise violate any of the provisions of this act.

(2) A person convicted of violating any of the provisions of this act shall be fined not to exceed five hundred dollars (\$500). Each violation is considered a separate offense for purposes of this subsection.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975.

66-3813. Prosecution of violations. All violations of this act when reported to the board and duly substantiated by affidavits or other satisfactory evidence shall be investigated by it, and if the allegation is found to be true, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

History: En. 66-3812 by Sec. 15, Ch. 476, L. 1975.

CHAPTER 39—SPEECH PATHOLOGISTS AND AUDIOLOGISTS

Section

66-3901. Purpose.

66-3902. Definitions.

66-3903. License required.

66-3904. License requirements to practice speech pathology or audiology—exempt activities.

66-3905. Function of the board and department.

66-3906. Qualifications and requirements for licensure.

66-3907. Licensure issuance—expiration—renewal.

66-3908. Qualifications and requirements for licensure—reciprocity and waiver.

66-3909. Examination.

66-3910. Licensing.

66-3911. Powers of board over licensees—unprofessional conduct defined.

66-3912. Penalty.

66-3913. Injunction of unlawful practice—restrictions on scope of practice.

66-3901. Purpose. The legislature of the state of Montana declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare, and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, and to protect the public from unprofessional conduct by qualified speech pathologists and

audiologists, and to help assure the availability of the highest possible quality speech pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975.

Title of Act

An act providing for the licensing and regulation of persons in Montana representing themselves as speech pathologists, audiologists, speech pathology or audiol-

ogy aides, and provisionally certified speech pathologists or audiologists, and creating a board of speech pathology and audiology, prescribing its powers and duties; providing penalties for violations; and amending section 93-701-4, R. C. M. 1947.

66-3902. Definitions. As used in this act:

- (1) "Board" means the board of speech pathologists and audiologists.
- (2) "Department" means the department of professional and occupational licensing.
- (3) "Speech pathologist" means one who practices speech pathology and who presents himself to the public by any title or description of services incorporating the words "speech pathologist," "speech correctionist," "speech therapist," "speech clinician," "language pathologist," "language therapist," "language clinician," or any similar title or description of services.
- (4) "Speech pathology aide" means any person meeting the minimum requirements established by the board of speech pathology and audiology who works directly under the supervision of a licensed speech pathologist.
- (5) "Audiologist" means a person who practices audiology and who presents himself to the public by any title or description of services incorporating the words "audiologist," "hearing clinician," "hearing therapist," or any similar title or description of service.
- (6) "Audiology aide" means any person, meeting the minimum requirements established by the board of speech pathology and audiology who works directly under the supervision of a licensed audiologist.
- (7) "Practice of speech pathology" means the application of principles, methods and procedures for the measurement, testing, evaluation, prediction, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of evaluation, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals.
- (8) "Practice of audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory behavior related to hearing impairment.
- (9) "Association" means the Montana Speech and Hearing Association.
- (10) "ASHA" means the American Speech and Hearing Association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing directly or indirectly any suspended or unlicensed person to perform any work covered by this act unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable or untruthful.

(12) "Provisionally licensed speech pathologist or audiologist" means those speech pathologists or audiologists who are currently practicing the profession in the state of Montana, who do not meet the minimum requirements for licensure as defined in this act and who are eligible for provisional licensure conditioned on biennial evidence of satisfactory progress towards meeting the requirements for licensure as provided in this act. This provisional licensure, as defined in this act, shall exist for no longer than six (6) years from the date of enactment of this act under any circumstance.

History: En. 66-3902 by Sec. 2, Ch. 543,
L. 1975.

66-3903. License required. (1) A license shall be issued to qualified persons either in speech pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications and in such instances the license fee shall be as though for one (1) license.

(2) No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this act.

History: En. 66-3903 by Sec. 3, Ch. 543,
L. 1975.

66-3904. License requirements to practice speech pathology or audiology—exempt activities. (1) Nothing in this act shall prevent a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this act shall restrict or prevent activities of a speech pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this act must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and shall not offer speech pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this act, such persons may consult or disseminate their research findings and scientific information to other such accredited academic institutions or

governmental agencies. They also may offer lectures to the public for a fee without being licensed under this act.

(4) Nothing in this act shall restrict activities and services of a student in speech pathology or audiology from pursuing a course of study in speech pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study and no fee shall accrue directly or indirectly to the student. These persons shall be designated by the title "speech pathology or audiology intern," "speech pathology or audiology trainee" or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this act shall restrict a person from another state from offering speech pathology or audiology services in this state if such services are performed for no more than five (5) days in any calendar year and if the services are performed in co-operation with a speech pathologist or audiologist licensed under this act. However a person not a resident of this state who is not licensed under this act but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by this act, or who is the holder of the ASHA certificate of clinical competency in speech pathology or audiology or its equivalent, may offer speech pathology or audiology services in this state for no more than thirty (30) days in any calendar year, if such services are performed in co-operation with a speech pathologist or audiologist licensed under this act and by securing a temporary license from the board subject to such limitations as the board may impose.

(6) Nothing in this act shall restrict any person holding a Class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this act shall restrict any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and which are described in Title 66, chapter 30.

History: En. 66-3904 by Sec. 4, Ch. 543,
L. 1975.

66-3905. Function of the board and department. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance may a meeting of three board members who are exclusively speech pathologists or exclusively audiologists be considered a quorum.

(2) Each board member shall receive travel expenses and mileage incidental to board meetings and business, as provided for in 59-538, 59-539, and 59-801, as amended. Compensation may be paid each board member, not otherwise compensated, in the amount of \$25 per day when attending board meetings.

(3) The department may employ persons it considers necessary to carry out the provisions of this act.

(4) All meetings of the board for the consideration of and action on matters coming before the board are open to the public, except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

(5) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(6) The department shall prepare a report to the governor as required by law.

(7) The board shall:

(a) administer, coordinate, and enforce the provisions of this act;

(b) evaluate the qualifications of each applicant for a license as issued under this act and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this act;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules including but not limited to those governing ethical standards of practice under this act;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this act, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings. Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal, shall be prima facie evidence of the validity of such documents.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977.

Amendments

Chapter 453, Laws of 1977 substituted subsection (2) for "Each board member shall receive actual and necessary expenses incidental to board meetings and business. Mileage shall be as provided in section 59-801"; and made minor changes in phraseology, punctuation and style.

Chapter 531, Laws of 1977 rewrote subsection (2).

Compiler's Notes

This section was amended twice in 1977, once by Ch. 453 and once by Ch. 531. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

66-3906. Qualifications and requirements for licensure. (1) To be eligible for licensing by the board as a speech pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and post classroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination. Written examinations may be supplemented by such oral examinations as the board determines. An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977.

Amendments

The 1977 amendment divided the section into numbered subsections and redesignated former subdivisions (1) and (2) as subdivisions (a) and (b); substituted "examination" for "licensing" near the end of the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977.

66-3907. Licensure issuance — expiration — renewal. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this act, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration, and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

(4) The department shall notify each person licensed under this act relative to the date of expiration of his license and the amount of the renewal fee. This notice shall be mailed to each licensed speech pathologist or audiologist at least one (1) month before the expiration of the license.

(5) Renewal may be made at any time during the sixty (60) days prior to the expiration date by application therefor.

(6) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased ten per cent (10%) for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(7) Application for renewal following a lapse of one (1) year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(8) Each year the department shall publish a list of all persons licensed under the act containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this act, place a

copy on file in the secretary of state's office, and furnish copies to the public upon request.

(9) The board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice.

History: En. 66-3907 by Sec. 8, Ch. 543,
L. 1975.

66-3908. Qualifications and requirements for licensure—reciprocity and waiver. (1) Application for examination for licensing a speech pathologist or audiologist shall be made upon forms prescribed by the board.

(2) Prior to July 1, 1976, the board shall license as a speech pathologist or audiologist any person who pays the prescribed fee, and who submits an affidavit that he meets the current academic, supervised clinical practicum and post-classroom sponsored employment requirements of the ASHA.

(3) Prior to July 1, 1976, a provisional license may be issued to an individual who holds a bachelor's degree with a major in speech pathology or audiology, who has accumulated one hundred seventy-five (175) clock hours of clinical practicum, and who has worked in this state as a speech pathologist or audiologist for at least one (1) academic year. The provisionally licensed speech pathologist or audiologist must work under the direct supervision of a licensed or certified speech pathologist or audiologist. The extent to which direct supervision will be provided for the provisionally licensed speech pathologist or audiologist will be determined by the supervising clinician. Generally, the supervising speech pathologist or audiologist shall provide direct assistance to the provisionally licensed speech pathologist or audiologist at least four (4) days per month. Most of the contacts by the supervising speech pathologist or audiologist shall be in person, but other avenues of contact may be made. Those persons granted provisional licensure shall complete the academic, clinical practicum and examination requirements for licensure within six (6) years after the effective date of this act. Twelve (12) quarter-hour credits of additional professional training towards licensure qualifications or any other proposed educational plan that leads to the same goal as presented to and approved by the board, must be obtained every two (2) years for renewal of provisional licensure. Provisionally licensed speech pathologists or audiologists who have not attained appropriate eligibility status within six (6) years of the date of enactment, will no longer be eligible to practice speech pathology or audiology in the state of Montana, except for those persons granted certification under subsection (8) of this section, but may work as a speech pathology or audiology aide as defined in this act.

(4) After July 1, 1976, all applicants must meet all the requirements set forth in this act.

(5) The board may waive the examination described in this act for those qualified applicants who, on the effective date of this act, are actively engaged in the practice of speech pathology or audiology in this state, providing that they file a license application within one (1) year of the effective date of this act.

(6) The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

(7) The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American Speech and Hearing Association in the area for which they are applying for a license.

(8) The board shall, on presentation and documentation in writing by a petitioner have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this act. This prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case.

History: En. 66-3908 by Sec. 9, Ch. 543,
L. 1975.

66-3909. Examination. (1) Except as otherwise provided in this act, an applicant shall be examined for speech pathology or audiology by the board, and shall pay to the board, at least thirty (30) days prior to the date of the examination, the examination fee for each examination as prescribed by this act.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech pathology or audiology as it considers appropriate. It may also examine the candidate with regard to his professional skills and his judgment in the utilization of speech pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination if any. Transcripts of oral examinations shall be retained by the board for at least one (1) year following the date of examination.

(7) A speech pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state, may perform activities and services of a speech pathology or audiology nature without a valid license pending disposition of application.

History: En. 66-3909 by Sec. 10, Ch.
543, L. 1975.

66-3910. Licensing. (1) The amount of fees prescribed in connection with a license as a speech pathologist or audiologist shall be as follows,

the exact fee to be determined by the board each year based on costs and predicted expenditures:

(a) application and examination fee for a license, no less than fifty dollars (\$50) nor more than one hundred dollars (\$100);

(b) license fee, and renewal thereof, no less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).

(2) All moneys received by the department shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the board and subject to section 82A-1603 (6).

(3) Each licensed speech pathologist or audiologist shall on or before July 31 of the year of expiration of his license pay to the board the fee for the renewal of his license.

(4) Renewal will be every two years beginning on July 1 of the appropriate year.

(5) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee while the license remains suspended to engage in the licensed activity, or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(6) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

(7) A person who fails to renew his license within the four (4) years after its expiration may not renew it, and it may not be restored, reissued or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of the act.

(8) No license tax shall be imposed upon speech pathologists or audiologists by a municipality or any other subdivision of the state.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975.

66-3911. Powers of board over licensees—unprofessional conduct defined. (1) The board may refuse to issue or renew a license, or may suspend or revoke the license of any licensee if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes, but is not limited to:

(a) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(b) being found guilty of unprofessional conduct, or having violated ethical standards of practice established pursuant to this act;

(c) violating any lawful order or rule of the board;

(d) violating any provision of this act.

(2) Denial, suspension or revocation of a license is permissible only after a hearing and procedures which comply with all applicable requirements of the Montana Administrative Procedure Act.

(3) One year after denial, suspension, or revocation of a license, a person may reapply for a license. The board may in its discretion require an examination for reinstatement.

(4) Where an applicant or licensee has been convicted of a felony or a crime involving moral turpitude, the board may suspend or revoke his license, or may decline to issue a license when:

- (a) the time for appeal has elapsed;
- (b) the judgment of conviction has been affirmed on appeal;
- (c) an order granting probation is made suspending the imposition of sentence.

History: En. 66-3911 by Sec. 12, Ch. 543, L. 1975.

66-3912. Penalty. A person convicted of violating this act shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975.

66-3913. Injunction of unlawful practice—restrictions on scope of practice. The practice of speech pathology or audiology in any way other than as defined in this act may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975.

CHAPTER 40—LICENSURE OF CRIMINAL OFFENDERS

Section

- 66-4001. Purpose.
- 66-4002. Intent and policy.
- 66-4003. Conviction not a sole basis for denial.
- 66-4004. Statement of reasons for denial.
- 66-4005. Licensure on completion of supervision.

66-4001. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975.

victed of a criminal offense who has served his sentence and is no longer under state supervision may be granted occupational licensure.

Title of Act

An act to provide that a person con-

66-4002. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490,
L. 1975.

66-4003. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense, and such criminal offense relates to the public health, welfare and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490,
L. 1975.

66-4004. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed, wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490,
L. 1975.

66-4005. Licensure on completion of supervision. Completion of probation or parole supervision, without any subsequent criminal conviction, shall be evidence of rehabilitation, provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490,
L. 1975.

TITLE 67—PROPERTY

Chapter

2. Definitions and nature of property, 67-205.
3. Ownership of property and interests therein, 67-308.1.
6. Servitudes, 67-601, 67-602.
9. Powers in relation to real property, 67-903, 67-904.
16. Transfer of real property—method and effect, 67-1602.1, 67-1603.
18. Uniform Gifts to Minors Act, 67-1801, 67-1804, 67-1807.
20. Surveys and co-ordinates, 67-2003, 67-2011, 67-2015.
21. Sale or lease of subdivided lands, 67-2101 to 67-2103, 67-2105 to 67-2108, 67-2110, 67-2112 to 67-2114, 67-2116 to 67-2118, 67-2121 to 67-2129, 67-2135.
22. Disposition of unclaimed property, 67-2211 to 67-2226.
23. Unit Ownership Act, 67-2302 to 67-2303.6, 67-2304, 67-2305, 67-2314, 67-2317 to 67-2319, 67-2322, 67-2323, 67-2340, 67-2342 to 67-2344.

CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

Section

67-205. Brands—recording—fees.

67-205. (6665.2) Brands—recording—fees. (1) An owner or prospective owner of animals described in 67-204 is entitled, by written subscribed statement, to adopt distinctive brands or tattoo marks, not including arabic numerals and not already in known use by others, for any of the animals and to have the distinctive brands and tattoo marks recorded in his name with the department of livestock on paying a recording fee equal to that charged for recording marks or brands used on domestic animals and livestock set by 46-609 for each brand and for each tattoo mark. The statements shall be recorded in a suitable book to be kept for that purpose by the department of livestock. The presence of the recorded brand or recorded tattoo marks on an animal is prima facie evidence of the ownership of the animal in the person, association, or corporation in whose name the brand or tattoo mark is recorded, subject always to the right to make a transfer of title, right, or interest in, or lien on the animal.

(2) A person desiring to transfer a brand or mark properly recorded by him under this section may do so provided he meets the requirements and pays the fees imposed by chapter 6 of Title 46. Brands or marks recorded under this section are subject to the same rerecording requirements and fees as imposed by chapter 6 of Title 46.

(3) All fees collected under this section shall be paid into the earmarked revenue fund for the use of the department.

History: En. Sec. 2, Ch. 97, L. 1933; amd. Sec. 196, Ch. 310, L. 1974; amd. Sec. 2, Ch. 10, L. 1977.

Amendments

The 1974 amendment substituted “department of livestock” for “secretary of the livestock commission” in the first sentence and made minor changes in phraseology and punctuation.

The 1977 amendment inserted the sub-

section (1) designation; substituted “described in 67-204” in the first sentence of subsection (1) for “in restraint or captivity”; substituted “recording fee equal to that charged for recording marks or brands used on domestic animals and livestock set by 46-609” in the first sentence of subsection (1) for “recording fee of four dollars”; added subsections (2) and (3); and made minor changes in phraseology and punctuation.

67-208. (6668) Land.**Improvements on Land**

Special assessments for flood control purposes under section 89-2330 are limited

to land, exclusive of improvements. In re West Great Falls Flood Control & Drainage Dist., 159 M 277, 496 P 2d 1143.

67-211. (6671) Appurtenances.**Water Rights**

Water rights represented by the water stocks, the registered owner of which was the seller of land under contract for deed, were incidental and appurtenant to the land where water rights were beneficially

used on the land; contract for deed effectively conveyed beneficial ownership in water rights in absence of an express reservation or exception. *Schwend v. Jones*, — M —, 515 P 2d 89.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN**Section**

67-308.1. Distribution of property whenever joint tenant fails to survive for one hundred twenty hours.

67-305. (6677) When qualified.**Acquisition of Property**

Where family-owned dairy farm corporation sold its lessors' interest in half of its herd to third party who then leased cattle back to corporation, the corporation, to the extent of the lease agreement, continued to own the cattle and, as long

as operation of dairy farm was uninterrupted and not abandoned, there was no "acquisition" of the farm under milk control board regulations. *Medo-Land Dairies v. Montana Milk Control Board*, 157 M 215, 483 P 2d 705.

67-308.1. Distribution of property whenever joint tenant fails to survive for one hundred twenty hours. (1) Whenever property is held in joint tenancy by two joint tenants and the joint tenants die within 120 hours of each other or it cannot be determined whether one survived the other by 120 hours, the property shall be distributed one-half to the estate of one joint tenant one-half to the estate of the other joint tenant.

(2) Whenever property is held in joint tenancy by more than two joint tenants and the last surviving joint tenant does not survive all of the other joint tenants by 120 hours or it cannot be determined whether he so survived for 120 hours, the property shall be distributed equally among the estates of the last surviving joint tenant and the joint tenants which he failed to survive by 120 hours.

History: En. 67-308.1 by Sec. 1, Ch. 75, L. 1977.

Title of Act

An act to provide for distribution of property held in joint tenancy whenever the last surviving joint tenant fails to survive the other joint tenants by 120 hours; and providing an immediate effective date.

Retroactive Application

Section 2 of Ch. 75, Laws 1977 read "The act is effective retroactively to June 30, 1975."

Separability Clause

Section 3, Ch. 75, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 4, Ch. 75, Laws 1977 provided the act should be effective upon its passage and approval. Approved March 25, 1977.

CHAPTER 6—SERVITUDES

Section

- 67-601. Servitudes attached to land.
 67-602. Servitudes not attached to land.
 67-609. [Transferred.]

67-601. (6749) Servitudes attached to land. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1 to 17. * * * [Same as parent volume.]

18. The right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land.

History: En. Sec. 1250, Civ. C. 1895; re-en. Sec. 4507, Rev. C. 1907; re-en. Sec. 6749, R. C. M. 1921; amd. Sec. 16, Ch. 489, L. 1975. Cal. Civ. C. Sec. 801. Field Civ. C. Sec. 245.

Public Easement

A general clause in a deed stating that the grant is subject to easement for roads and ditches as now established and located upon or across premises, does not reserve an easement to the general public. *Wilson v. Chestnut*, — M —, 525 P 2d 24.

Amendments

The 1975 amendment added subdivision 18.

67-602. (6750) Servitudes not attached to land. The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1 to 6. * * * [Same as parent volume.]

7. The right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land.

History: En. Sec. 1251, Civ. C. 1895; re-en. Sec. 4508, Rev. C. 1907; re-en. Sec. 6750, R. C. M. 1921; amd. Sec. 17, Ch. 489, L. 1975. Cal. Civ. C. Sec. 802. Based on Field Civ. C. Sec. 246.

Amendments

The 1975 amendment added subdivision 7.

67-606. (6754) Extent of servitudes.

Restrictive Covenant in Deed

Road easement which had been purchased from former owners of a portion of subdivision with full knowledge that the building of the road would be in vio-

lation of the restrictive covenants of the subdivision, did not grant buyer the right to violate the covenants. *Sheridan v. Martinsen*, — M —, 523 P 2d 1392.

67-609. [Transferred.]

Compiler's Notes

Section 15, Ch. 489, Laws of 1975 renumbered this section as sec. 62-617.

67-611. (6759) How extinguished.

Abandonment and Reconveyance of Easement

Easement acquired for use of land as a public park adjoining highway was abandoned by state's abandonment of the highway and abandonment of its maintenance and dominion over the park area. *Park County Rod & Gun Club v. Department of Highways*, — M —, 517 P 2d 352.

Incompatible Act

Purchase by city of an easement which conveyed nothing more than the city already owned under a prior easement was not an act incompatible with the prior easement and did not extinguish the prior easement. *City of Billings v. O. E. Lee Co.*, — M —, 542 P 2d 97.

CHAPTER 7—RIGHTS INCIDENTAL TO OWNERSHIP OF REAL PROPERTY

67-710. (6769) Terms of lease may be changed by notice.**Intent**

Intent of this section is to inform tenants of rent increase, not to gain jurisdiction over them. *Walker v. Tschache*, — M —, 510 P 2d 9.

Notice Served Upon Tenant

Notice requirement of this section did not mean jurisdictional service, and was fulfilled when landlord placed timely rent increase notices in addressed envelopes in tenants' mailboxes. *Walker v. Tschache*, — M —, 510 P 2d 9.

CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

67-808. Restriction on liability to gratuitous licensee for recreation.**Government Licensee**

Notwithstanding that the agreement between power company and United States government used word "licensee," power company qualified as "landowner or tenant," as used in this section, since legal effect of instrument was to create lease; therefore, power company could properly use this section as an affirmative defense in personal injury action. *State ex rel. Tucker v. District Court*, 155 M 202, 468 P 2d 773.

Property

In action for personal injuries resulting from fall from private train being operated on defendant's property, trial court properly overruled plaintiff's motion to strike affirmative defense based on this section on ground that this section applies only to injuries caused by real estate, since, under section 19-103, "property," as used in this section, includes both real and personal property. *State ex rel. Tucker v. District Court*, 155 M 202, 468 P 2d 773.

CHAPTER 9—POWERS IN RELATION TO REAL PROPERTY

Section

67-903. Married persons.

67-904. Married persons.

67-903. (6800) Married persons. A married person may execute a power during marriage, without the concurrence of the spouse, unless otherwise prescribed by the terms of the power.

History: En. Sec. 1332, Civ. C. 1895; re-en. Sec. 4553, Rev. C. 1907; re-en. Sec. 6800, R. C. M. 1921; amd. Sec. 31, Ch. 535, L. 1975. **Field Civ. C. Sec. 320.**

Amendments

The 1975 amendment substituted "person" for "woman"; and substituted "the spouse" for "her husband."

67-904. (6801) Married persons. No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority.

History: En. Sec. 1333, Civ. C. 1895; re-en. Sec. 4554, Rev. C. 1907; re-en. Sec. 6801, R. C. M. 1921; amd. Sec. 32, Ch. 535, L. 1975. **Based on Field Civ. C. Sec. 321.**

Amendments

The 1975 amendment added "which could not be executed by a married man before he attains his majority."

CHAPTER 11—PERSONAL PROPERTY—KINDS—LAW GOVERNING

67-1103. (6805) Transfer and survivorship.**Joinder of Insurance Company**

The insured may prosecute an action for the full amount of the loss, or either the insured or the insurer may separately sue for his portion of the loss, and if the ac-

tion is instituted by either one alone, the defendant can compel joinder of the other or may waive joinder. *State ex rel. Slovak v. District Court*, — M —, 534 P 2d 850.

CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY

67-1203. (6818) Prescription.**Easement by Prescription**

Since prescriptive easement must be by hostile or adverse use, no use of a road

with permission of the owner can ripen into prescriptive easement. *Wilson v. Chestnut*, — M —, 525 P 2d 24.

CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER—
GRANTS AND THEIR INTERPRETATION**67-1511. (6845) Delivery to grantee is necessarily absolute.****Unconditional Delivery and Acceptance**

Informal written instrument, indicating that donor wished to pay money on demand but that it could be collected against his estate if not demanded or paid sooner, was unconditionally delivered and ac-

cepted when accepted by donee, even though no demand for payment was made during donor's lifetime. *Faith Lutheran Retirement Home v. Veis*, 156 M 38, 473 P 2d 503.

67-1512. (6846) Delivery in escrow.**Delivery to be Made upon Death of Grantor**

Where deeds had been delivered to grantor's attorney with written instructions for delivery to grantee after death of grantor, and the instructions contained

an acknowledgment signed by the grantor that such delivery placed the deeds out of the possession and control of the grantor, such delivery was sufficient to establish delivery in escrow. *Blackmer v. Blackmer*, — M —, 525 P 2d 559.

67-1516. (6850) Limitations—how controlled.**Granting Clause**

Granting clause which referred specifically to grantee's right to use the land as a public park constituted a clear and dis-

tinct limitation; interest conveyed was an easement. *Park County Rod & Gun Club v. Department of Highways*, — M —, 517 P 2d 352.

67-1523. (6857) Incidents.**Water Rights**

Water rights represented by the water stocks, the registered owner of which was the seller of land under contract for deed, were incidental and appurtenant to the land where water rights were beneficially

used on the land; contract for deed effectively conveyed beneficial ownership in water rights in absence of an express reservation or exception. *Schwend v. Jones*, — M —, 515 P 2d 89.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section

67-1602.1. Joint tenancy created by direct conveyance.

67-1603. Grant by married person—how acknowledged.

67-1602.1. Joint tenancy created by direct conveyance. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

History: En. Sec. 1, Ch. 208, L. 1963; paragraph, validating all joint tenancies created by direct conveyance prior to July 1, 1963.
amd. Sec. 1, Ch. 9, L. 1971.

Amendments

The 1971 amendment added the second

67-1603. (6861) Grant by married person—how acknowledged. No estate in the real property of a married person passes by any grant purporting to be executed or acknowledged by such person, unless the grant or instrument is acknowledged by the grantor in the manner prescribed by sections 39-108 and 39-113.

History: En. Sec. 1502, Civ. C. 1895; re-en. Sec. 4614, Rev. C. 1907; re-en. Sec. 6861, R. C. M. 1921; amd. Sec. 33, Ch. 535, L. 1975. Cal. Civ. C. Sec. 1093. Based on Field Civ. C. Sec. 486.

Amendments

The 1975 amendment substituted "person" and "grantor" for references to a married woman.

67-1607. (6865) What easements pass with property.

Implied Easement

Ample room for alternative ingress and egress to contiguous county road precluded finding of implied easement on conveyance of part of a tract, in spite of permissive use of access road by several succeeding property owners for twenty-four years. Poepping v. Neil, 159 M 488, 499 P 2d 319.

when plaintiff bought the adjoining property, and defendant still owned land over which he had access, there could have been no implied reserved easement for the roadway. Godfrey v. Pilon, — M —, 529 P 2d 1372.

Implied Reserved Easement of Necessity

Where all witnesses agreed that there was no visible sign of a roadway or path over defendant's property at the time

Marking of Reserved Easement

Common grantor who sold land fronting on the road, could not later reserve an easement for construction of ingress road over land previously sold by placing a coffee can marker at the point where the ingress road was to be constructed. Godfrey v. Pilon, — M —, 529 P 2d 1372.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—MODES OF TRANSFER

67-1706. (6882) Gifts defined.

Donative Intent

Evidence that donor was eighty-eight years of age, suffered from cerebral arteriosclerosis and was disoriented and forgetful, was more susceptible to suggestion than the average healthy person, that the donee was a close friend and blood relative of the donor, and that the donee had

written a letter suggesting that the donor put someone else's name on her savings account, was sufficient to void purported gift effected by transfer of donor's savings account to donor and donee jointly due to donor's mental incapacity to form the requisite intent. Patterson v. Halterman, — M —, 505 P 2d 905.

CHAPTER 18—UNIFORM GIFTS TO MINORS ACT

Section

67-1801. Definitions.

67-1804. Duties and powers of custodian.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian.

67-1801. Definitions. In this act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of eighteen (18) years.

(b) to (e). * * * [Same as parent volume.]

(f) A "custodian" is a person so designated in a manner prescribed in this act; the term includes a successor custodian.

(g) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings and loan or similar institution under federal laws or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state; a "domestic financial institution" is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state: an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(h) to (l). * * * [Same as parent volume.]

(m) A "minor" is a person who has not attained the age of eighteen (18) years.

(n) to (p). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 245, L. 1957;
amd. Sec. 1, Ch. 234, L. 1967; amd. Sec.
11, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subdivisions (a) and (m) from 21 to 18 years, and made minor changes in punctuation.

67-1804. Duties and powers of custodian. (a) to (c). * * * [Same as parent volume.]

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of eighteen (18) years, or if the minor dies before attaining the age of eighteen (18) years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) to (j). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 245, L. 1957;
amd. Sec. 4, Ch. 234, L. 1967; amd. Sec.
12, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian. (a). * * * [Same as parent volume.]

(b) The designation of a successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodian for (name of minor) under the Montana Uniform Gifts to Minors Act"; and

(2). * * * [Same as parent volume.]

(c). * * * [Same as parent volume.]

(d) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of eighteen (18) years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), a donor, his legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(e) and (f). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 245, L. 1957;
amd. Sec. 6, Ch. 234, L. 1967; amd. Sec.
13, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified in subsection (d) from 21 to 18 years.

CHAPTER 19—PRINCIPAL AND INCOME ACT

67-1901. Definitions.

NOTE.—Uniform State Law. The following states have adopted a Revised Uniform Principal and Income Act: California, Indiana, Kansas, Minnesota, Mississippi, Nevada, New Mexico, North Dakota.

CHAPTER 20—SURVEYS AND CO-ORDINATES

Section

67-2003. Definitions.

67-2011. Co-ordinate system adopted—designation—division of state into zones.

67-2015. Technical description of zones—stations marked on ground.

67-2003. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(1) to (7) * * * [Same as parent volume.]

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under Title 66, chapter 23, and has a paid up license for that calendar year, or who is authorized under Title 66, chapter 23, to practice land surveying.

(9) The "board" is the board of professional engineers and land surveyors, provided for in section 82A-1602(11).

History: En. Sec. 3, Ch. 202, L. 1963;
amd. Sec. 320, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "Title 66, Chapter 23" in subdivision (8) for "Montana Professional Engineers Regis-

tration Act"; substituted "board of professional engineers and land surveyors" in subdivision (9) for "state board of registration for professional engineers and land surveyors"; and added "provided for in section 82A-1602(11)" to subdivision (9).

67-2011. Co-ordinate system adopted — designation — division of state into zones. The system of plane co-ordinates which has been established by the United States Coast and Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the

state of Montana is hereafter to be known and designated as the "Montana Co-ordinate System."

For the purpose of the use of this system the state is divided into a "North Zone," and "Central Zone," and a "South Zone."

The area now included in the following counties shall constitute the North Zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

The area now included in the following counties shall constitute the Central Zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

The area now included in the following counties shall constitute the South Zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

History: En. Sec. 1, Ch. 232, L. 1965;
amd. Sec. 1, Ch. 73, L. 1975.

Amendments

The 1975 amendment deleted McCone County from the North Zone and added it to the Central Zone.

67-2015. Technical description of zones—stations marked on ground.

(a) For purposes of more precisely defining the Montana Co-ordinate System, the following description by the United States Coast and Geodetic Survey is adopted:

The Montana Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $47^{\circ} 51'$ and $48^{\circ} 43'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $109^{\circ} 30'$ west of Greenwich and the parallel $44^{\circ} 00'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet and $y = 0$ feet.

The Montana Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $46^{\circ} 27'$ and $47^{\circ} 53'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $109^{\circ} 30'$ west of Greenwich and the parallel $45^{\circ} 50'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet and $y = 0$ feet.

The Montana Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $44^{\circ} 52'$ and $46^{\circ} 24'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $109^{\circ} 30'$ west of Greenwich and the parallel $47^{\circ} 00'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet and $y = 0$ feet.

(b) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 232, L. 1965;
amd. Sec. 2, Ch. 73, L. 1975.

Amendments

The 1975 amendment changed the origin

of co-ordinates of the North Zone from $109^{\circ} 30'$ west and $47^{\circ} 00'$ north to the present designation of $109^{\circ} 30'$ west and $44^{\circ} 00'$ north.

CHAPTER 21—SALE OR LEASE OF SUBDIVIDED LANDS

Section

- 67-2101. Definition of terms.
- 67-2102. Rules.
- 67-2103. Notice of intention to offer subdivided lands—contents of notice.
- 67-2105. Additional information required by board.
- 67-2106. Fee for filing of questionnaire—disposition of fees.
- 67-2107. Investigation of subdivisions—powers of board.
- 67-2108. Findings not to be used in advertising.
- 67-2110. Required provisions for protection of purchasers and lessees.
- 67-2112. Notice of multiple sales or leases to one purchaser or lessee.
- 67-2113. Inspection of records by board—notice of change of address or change of depository.
- 67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings.
- 67-2116. Misdemeanors enumerated.
- 67-2117. Definitions.
- 67-2118. Board.
- 67-2121. Application for registration.
- 67-2122. Public offering statement.
- 67-2123. Inquiry and examination.
- 67-2124. Notice of filing and registration.
- 67-2125. Annual report.
- 67-2126. General powers and duties.
- 67-2127. Investigations and proceedings.
- 67-2128. Cease and desist orders.
- 67-2129. Revocation.
- 67-2135. Service of process.

67-2101. Definition of terms. Unless the context requires otherwise, in this act:

(1) "Subdivision" and "subdivided lands" mean any tract of land which is hereafter divided into five (5) or more parcels, a parcel of which is less than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

(2) "Board" means the board of real estate, provided for in section 82A-1602.23.

(3) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 191, L. 1963; **Amendments**
amd. Sec. 321, Ch. 350, L. 1974.

The 1974 amendment added subdivisions (2) and (3); and made minor changes in phraseology and style.

67-2102. Rules. The board may adopt rules necessary for the enforcement of this act.

History: En. Sec. 2, Ch. 191, L. 1963; **Amendments**
amd. Sec. 322, Ch. 350, L. 1974.

The 1974 amendment substituted "board" for "state real estate commissioner"; and made minor changes in phraseology.

67-2103. Notice of intention to offer subdivided lands—contents of notice. (1) Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the board in writing of his intention to sell or lease such offering.

(2) The notice of intention shall contain the following information:

- (a) The name and address of the owner;
- (b) The name and address of the subdivider;
- (c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads;
- (d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon;

(e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used;

(f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas, and telephone facilities;

(g) Copies of any advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the property, or an interest therein, when the material is or might be circulated outside of this state;

(h) Such other information as the owner, his agent, or subdivider, may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963;
amd. Sec. 323, Ch. 350, L. 1974.

in subsection (1) for "state real estate commissioner"; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "board"

67-2105. Additional information required by board. After receiving the notice of intention, the board may require additional information concerning the project as it considers necessary, for which it may prepare a questionnaire for the owner, his agent or subdivider, to answer.

History: En. Sec. 5, Ch. 191, L. 1963;
amd. Sec. 324, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commissioner"; and made minor changes in phraseology.

67-2106. Fee for filing of questionnaire—disposition of fees. When the questionnaire provided for in section 67-2105 is filed, the person filing the questionnaire shall pay to the department a filing fee of one hundred dollars (\$100). Fees and charges provided for by this act shall be paid to the department and by it deposited with the state treasurer. The state treasurer shall place five per cent (5%) of these fees and charges in the general fund and ninety-five per cent (95%) of these fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in the administration of this act when the claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963;
amd. Sec. 325, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "department" for "commissioner"; and made minor changes in phraseology.

67-2107. Investigation of subdivisions—powers of board. The board may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of an investigation, the board may:

(1) Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

(2) Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

(3) Require evidence of compliance with the requirements of appropriate authorities.

(4) Require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963; for "state real estate commissioner" and amd. Sec. 326, Ch. 350, L. 1974. "commissioner" in the first two sentences; and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "board"

67-2108. Findings not to be used in advertising. It is unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the board as provided for in this act.

History: En. Sec. 8, Ch. 191, L. 1963; **Amendments**
amd. Sec. 327, Ch. 350, L. 1974.

The 1974 amendment substituted "board" for "commissioner" and made a minor change in phraseology.

67-2110. Required provisions for protection of purchasers and lessees. It is unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(1) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the board until: (a) The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: (b) A proper release is obtained from any such blanket encumbrance, or: (c) Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(2) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the board until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(3) A bond in the amount of twenty-five hundred dollars (\$2,500) to the state of Montana is furnished to the board for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to the terms as may be approved by the board, which shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; however, if the purchaser or lessee, by reason of default, is not entitled to the return of the moneys, or any portion there-

of, then the bond shall be exonerated to the extent of the amount of the moneys to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963; for "state real estate commissioner" and
amd. Sec. 328, Ch. 350, L. 1974. "commissioner" throughout the section;
and made minor changes in phraseology,
punctuation and style.

Amendments

The 1974 amendment substituted "board"

67-2112. Notice of multiple sales or leases to one purchaser or lessee.

When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased, or sold to another, or when an interest therein is acquired by one owner, lessee or optionee, the board shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963;
amd. Sec. 329, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board"
for "state real estate commissioner"; and
made minor changes in punctuation.

67-2113. Inspection of records by board—notice of change of address or change of depository. Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the board and the board shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963;
amd. Sec. 330, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board"
for "state real estate commissioner" and
"commissioner."

67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings. When in the opinion of the board a person has or is violating, or is about to violate, any of the provisions of this act, the board may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the board may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the board is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

History: En. Sec. 14, Ch. 191, L. 1963;
amd. Sec. 331, Ch. 350, L. 1974.

"commissioner" throughout the section; deleted a second paragraph which stated that hearings are to be held, as provided under section 66-1917; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "board"
for "state real estate commissioner" and

67-2116. Misdemeanors enumerated. The following acts are misdemeanors:

(1) The willful violation or failure to comply with any of the provisions of this act;

(2) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the board;

(3) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner of subdivided lands or a subdivision, wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act;

(4) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

History: En. Sec. 16, Ch. 191, L. 1963; for "state real estate commissioner" in amd. Sec. 332, Ch. 350, L. 1974.

for "state real estate commissioner" in subdivision (2); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "board"

67-2117. Definitions. When used in this act, unless the context otherwise requires:

(1) "Disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision, if undertaken for gain or profit;

(2) "Offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(3) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership unincorporated association, two (2) or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(4) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;

(5) "Subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

(6) "Subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units, or interests and also includes any land whether contiguous or not if five (5) or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(7) "Board" means the board of real estate, provided for in section 82A-1602.23.

(8) "Chairman" means the chairman of the board of real estate.

(9) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. Sec. 1, Ch. 97, L. 1969; amd. Sec. 333, Ch. 350, L. 1974.

Amendments

The 1974 amendment added subdivisions (7) through (9); and made minor changes in style.

67-2118. Board. This act shall be administered by the board. The board shall charge a fee, not to exceed five hundred dollars (\$500) for each application for registration of subdivided lands received in accordance with this act, which shall be paid into the earmarked revenue fund to the

credit of the board and is hereby appropriated for the purposes of carrying out the provisions of this act, subject to section 82A-1603(6). All expenditures of the funds by the board under the provisions of this act shall be certified and approved by the board and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The department shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of expenses in connection therewith. The board may make orders concerning the disbursement of the moneys in the earmarked revenue fund, including the payment of compensation and expenses of board members.

History: En. Sec. 2, Ch. 97, L. 1969; amd. Sec. 334, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "Montana real estate commission" and "agency" throughout the section; inserted

"subject to section 82A-1603(6)" in the second sentence; substituted "department" for "agency" in the next-to-last sentence; deleted "its employees" after "compensation and expenses of" in the last sentence; and made minor changes in phraseology and punctuation.

67-2121. Application for registration. (1) The application for registration of subdivided lands shall be filed with the department as prescribed by the board's rules and shall contain the following documents and information:

(a) An irrevocable appointment of the department to receive service of any lawful process in any noncriminal proceeding arising under this act against the applicant or his personal representative;

(b) A legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

(c) The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(d) The applicant's name and address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(e) The name, address, and principal occupation for the past five (5) years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;

(f) A statement, in a form acceptable to the board, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of an attorney licensed to practice in this state, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the board;

(g) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(h) Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(i) If there is a lien or encumbrance affecting more than one (1) lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(j) Copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands;

(k) A statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands;

(l) A statement of the existing provisions for access, sewage, disposal, water, and other public utilities, in the subdivision; a statement of the improvements to be installed; the schedule for their completion; and a statement as to the provisions for improvement maintenance;

(m) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(n) The proposed public offering statement;

(o) Any other information, including any current financial statement, which the board by its rules requires for the protection of purchasers.

(2) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(3) The subdivider shall immediately report any material changes in the information contained in an application for registration.

History: En. Sec. 5, Ch. 97, L. 1969; first sentence; substituted "board's" for "agency's" and "board" for "agency" throughout the section; substituted "department" for "agency" in subdivision (1)(a); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment inserted "with the department" after "shall be filed" in the

67-2122. Public offering statement. (1) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the department shall be in a form prescribed by the board's rules and shall include the following:

(a) The name and principal address of the subdivider;

(b) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering;

(c) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(d) A statement of the use for which the property is offered;

(e) Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(f) Additional information required by the board to assure full and fair disclosure to prospective purchasers.

(2) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the board approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the board requires it.

(3) The board may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers. No change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the board and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

History: En. Sec. 6, Ch. 97, L. 1969;
amd. Sec. 336, Ch. 350, L. 1974.

sentence of subsection (1) for "submitted to the agency"; substituted "board" for "agency" throughout the remainder of the section; and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "submitted to the department" in the second

67-2123. Inquiry and examination. On receipt of an application for registration in proper form by the department, the board shall forthwith initiate an examination to determine that:

(1) The subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the board in its rules and afford full and fair disclosure;

(4) The subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land disposi-

tions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order entered by any authority within the past ten (10) years restraining a false or misleading promotional plan involving land dispositions;

(5) The public offering statement requirements of this act have been satisfied.

History: En. Sec. 7, Ch. 97, L. 1969; amd. Sec. 337, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "by the

department" after "form" in the first sentence; substituted "board" for "agency" in the first sentence and in subdivision (3); and made minor changes in phraseology and style.

67-2124. Notice of filing and registration. (1) On receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within ninety (90) days from the date of the notice of filing, the board shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be considered registered unless the applicant has consented in writing to a delay.

(2) If the board affirmatively determines, upon inquiry and examination, that the requirements of section 67-2123 have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(3) If the board determines upon inquiry and examination that any of the requirements of section 67-2123 has not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within ten (10) days. If the requirements are not met within the time allowed the board shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty (20) days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

(4) No subdivided lands may be registered or considered registered until the subdivider has filed a bond with the department, executed by a surety company authorized to do business in this state, on a form approved by the board, and in such amount as the board shall deem necessary to protect purchasers from damages arising out of violation of any provision of the Revised Codes of Montana, 1947, or any rule or regulation promulgated in furtherance thereof, when the volume of business of the subdivider and other related factors are taken into consideration, but in no event less than fifty thousand dollars (\$50,000).

History: En. Sec. 8, Ch. 97, L. 1969; amd. Sec. 1, Ch. 110, L. 1974; amd. Sec. 338, Ch. 350, L. 1974.

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 110 and once by Ch. 350. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

Amendments

Chapter 110, Laws of 1974, substituted in subsection (4) "and in such amount as the board shall deem necessary * * * in no event less than fifty thousand dollars (\$50,000)" for "conditioned that the sub-

divider shall pay, to the extent of ten thousand dollars (\$10,000) for each occurrence, any judgment recovered against him for loss or damage to any person arising out of the sale or disposition in Montana of any subdivided lands situate out-of-state"; and made minor changes in phraseology.

Chapter 350, Laws of 1974, substituted "department shall issue" in the first sentence of subsection (1) for "agency shall issue"; substituted "board" for "agency"

throughout the section; substituted "filed a bond with the department" in the first sentence of subsection (4) for "filed a bond with the agency"; and made minor changes in phraseology and style.

Effective Date

Section 2 of Ch. 110, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 11, 1974.

67-2125. Annual report. (1) Within thirty (30) days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report with the department in the form prescribed by the rules of the board. The report shall reflect any material changes in information contained in the original application for registration.

(2) The board may permit the filing of annual reports within thirty (30) days after the anniversary date of the consolidated registration instead of the anniversary date of the original registration.

History: En. Sec. 9, Ch. 97, L. 1969; amd. Sec. 339, Ch. 350, L. 1974.

Amendments

The 1974 amendment inserted "with the

department" after "file a report" in the first sentence; substituted "board" for "agency" in two places; and made minor changes in style.

67-2126. General powers and duties. (1) In the administration of this act, the board shall have all of the powers and duties as stated in subsections (2), (3) and (4) of section 66-1927. The board shall adopt reasonable rules relating to the administration of this act, but not inconsistent therewith, which may be amended or repealed. The rules shall include but need not be limited to:

(a) Provisions for advertising standards to assure full and fair disclosure;

(b) Provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(c) Provisions for operating procedures; and,

(d) Other rules necessary and proper to accomplish the purpose of this act.

(2) The board by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, the board, with or without prior administrative proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator

may be appointed. The board is not required to post a bond in any court proceedings.

(4) The board may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the department notice of the suit and copies of all pleadings.

(5) The board may:

(a) Accept registrations filed in other states or with the federal government;

(b) Contract with similar agencies in this state or other jurisdictions to perform investigative functions;

(c) Accept grants-in-aid from any source.

(6) The board shall co-operate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

(7) The board may exempt a subdivision of twenty-five (25) or fewer lots, parcels, units, or interests from the provisions of this act if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

History: En. Sec. 10, Ch. 97, L. 1969; amd. Sec. 340, Ch. 350, L. 1974.

for "agency" throughout the section; substituted "department" for "agency" in the second sentence of subsection (4); and made minor changes in phraseology and style.

Amendments

The 1974 amendment substituted "board"

67-2127. Investigations and proceedings. (1) The board may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the board determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the board or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the board may apply to any district court of this state for an order compelling compliance.

(4) Any person directly affected by any ruling, determination, or decision of the board or any officer thereof, may appeal to the board for hearing and review by serving written notice of appeal upon the chairman within fifteen (15) days after such rule, determination or decision is mailed to, or

served upon, the person. Notice of appeal shall state specifically the matters that the appellant desires reviewed, but shall not act as a stay unless otherwise provided by this act. Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than fifteen (15) days prior to the date of hearing, to be held in the offices of the department in Helena, Montana, or elsewhere as the chairman shall order. The board is not bound by any laws of evidence of this state. Four (4) members of the board shall constitute a quorum, one of whom must be the chairman. No member of the board shall hear any matter in which he has a personal interest, nor shall he represent any person or witness at the hearing. Any party to the proceedings may challenge any board member in writing, served upon the chairman of the board five (5) days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the board shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the board membership to less than four (4), the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing board. The board may postpone or continue a hearing from time to time as it considers necessary. The decision of any three (3) board members shall constitute the decision of the board on any issue presented for its decision. If the appellant or his representative fails to appear at the hearing after due notice, and good cause for continuance is not shown, the board shall render its decision upon the evidence presented to it. The board shall have continuing jurisdiction over all matters heard by it, to examine additional evidence, or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, demands, findings and decisions made by it at any time and shall not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court.

History: En. Sec. 11, Ch. 97, L. 1969; amd. Sec. 341, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "agency" in subsection (1) through the first sentence of subsection (4); deleted "or employee" after "any officer" in the first sentence of subsection (4); substituted "board" for "Montana real estate commission" before "for hearing and review" in the first sentence of subsection (4); substituted "department" for "com-

mission" in the third sentence of subsection (4); substituted "board" for "commission" elsewhere in subsection (4); deleted four sentences from subsection (4) relating to procedure for hearings before the former commission; deleted a sentence from subsection (4) relating to written decisions signed by the commissioners; deleted a sentence from subsection (4) relating to distributing and filing copies of the commission's decisions; and made minor changes in phraseology, punctuation and style.

67-2128. Cease and desist orders. (1) If the board determines after notice and hearing that a person has:

- (a) Violated any provision of this act;
- (b) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the board;
- (d) Disposed of any subdivided lands which have not been registered with the board; or

(e) Violated any lawful order or rule of the board; it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the board will carry out the purposes of this act.

(2) If the board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the board whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within twenty (20) days to determine whether or not it becomes permanent.

History: En. Sec. 12, Ch. 97, L. 1969;
amd. Sec. 342, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "agency" throughout the section; and made minor changes in style.

67-2129. Revocation. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(a) failed to comply with the terms of a cease and desist order;

(b) been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deceptive practices, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(d) failed faithfully to perform any stipulation or agreement made with the board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) made intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the board finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History: En. Sec. 13, Ch. 97, L. 1969;
amd. Sec. 343, Ch. 350, L. 1974; amd.
Sec. 55, Ch. 359, L. 1977.

Amendments

The 1974 amendment substituted "board" for "agency" in subdivision (1)(d) and subsection (2); and made minor changes in style.

The 1977 amendment substituted "deceptive practices" in subsection (1)(b) for "deception"; designated the former second sentence of subdivision (1)(e) as subsection (2); redesignated former subsection (2) as subsection (3); and made minor changes in style.

67-2130. Repealed.

Repeal

Section 68-2130 (Sec. 14, Ch. 97, L. 1969), relating to judicial review of deci-

sions by the former Montana real estate commission, was repealed by Sec. 363, Ch. 350, Laws of 1974.

67-2135. Service of process. (1) In addition to the methods of service of process provided for in the Montana Rules of Civil Procedure, service may be made upon any person for any cause arising under the provisions of this act by delivering a copy of the process to the office of the department, but it is not effective unless:

(a) The plaintiff (which may be the board in a proceeding instituted by it) immediately sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address; and

(b) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

History: En. Sec. 19, Ch. 97, L. 1969; amd. Sec. 344, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "agency" in the first sentence of subsection (1) and in subsection (2); substituted "board" for "agency" in subdivision (1)(a); and made minor changes in style.

CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

Section

- 67-2211. Report of abandoned property.
- 67-2212. Notice and publication of lists of abandoned property.
- 67-2213. Payment or delivery of abandoned property.
- 67-2214. Relief from liability by payment or delivery.
- 67-2215. Income accruing after payment or delivery.
- 67-2216. Periods of limitation not a bar.
- 67-2217. Sale of abandoned property.
- 67-2218. Deposit of moneys.
- 67-2219. Claim for abandoned property paid or delivered.
- 67-2220. Determination of claims.
- 67-2221. Judicial action upon determination.
- 67-2222. Election to take payment or delivery.
- 67-2223. Examination of records.
- 67-2224. Proceeding to compel delivery of abandoned property.
- 67-2225. Penalties.
- 67-2226. Rules and regulations.

67-2201. Definitions and use of terms.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have adopted

the "Uniform Disposition of Unclaimed Property Act": Minnesota, Nebraska, Rhode Island, Vermont and Wisconsin.

67-2206. Property of business associations, etc.

Shares and Dividends

Where corporation was voluntarily dissolved, unclaimed shares and their pro rata share of unpaid dividends would become abandoned property and subject to

escheat to state two years after final distribution of assets. *Barnes-King Development Co. v. Corette*, 156 M 202, 478 P 2d 868.

67-2211. Report of abandoned property. (1) Every person holding moneys or other property, tangible or intangible, presumed abandoned under this act shall report the property to the state department of revenue as hereinafter provided.

(2) The report shall be verified and shall include:

(a) except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of \$10 or more presumed abandoned under this act;

(b) in case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items of value under \$10 each may be reported in aggregate.

(d) the date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) other information which the state department of revenue prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 every 3 years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations, and cooperatives, shall be filed before May 1 of each year as of December 31 next preceding. The state department of revenue may request that any other reports be filed each year. The state department of revenue may postpone the reporting date upon written request by any person required to file a report. The state department of revenue shall furnish forms for this report.

(5) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall before filing the annual report communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification if made by a partnership shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the 10-year period preceding its effective date.

History: En. Sec. 11, Ch. 244, L. 1963; 1971; amd. Sec. 24, Ch. 391, L. 1973; amd. amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Sec. 1, Ch. 195, L. 1977. Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L.

Amendments

The 1971 amendment substituted "moneys" for "funds" in subsection (a) and in subdivision (b)(2); and substituted "state board of equalization" for "state treasurer" in subsection (a), in subdivision (b)(5), and in three places in subsection (d).

The 1973 amendment substituted "de-

partment of revenue" for "board of equalization" throughout the section.

The 1977 amendment redesignated subsections (a) to (g) as subsections (1) to (7); redesignated subdivisions (b)(1) to (b)(5) as subdivisions (2)(a) to (2)(e); increased the dollar limits in subdivisions (2)(a) and (2)(e) from \$3 to \$10; and made minor changes in phraseology, punctuation and style.

67-2212. Notice and publication of lists of abandoned property. (a) Within one hundred twenty (120) days from the filing of the report required by section 67-2211, the state department of revenue shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1). * * * [Same as parent volume.]

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state department of revenue.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be placed not later than eighty-five (85) days after such publication date in the custody of the state department of revenue to whom all further claims must thereafter be directed.

(c) The state department of revenue is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless the department deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 67-2211, the state department of revenue shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars (\$25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state department of revenue, property is being held to which the addressee appears entitled.

(2). * * * [Same as parent volume.]

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state department of revenue to whom all further claims must be directed.

(f). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971; amd. Sec. 25, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in the

first sentence of subsection (a), at the end of subdivision (b)(2), near the end of subdivision (b)(3), in two places in subsection (c), in subsection (d), and in subdivisions (e)(1) and (e)(3).

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

67-2213. Payment or delivery of abandoned property. Every person who has filed a report as provided by section 67-2211 shall within twenty (20) days after the time specified in section 67-2212 for claiming the property from the holder, or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 67-2202 within twenty (20) days after the filing of the report, pay or deliver to the state department of revenue all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 67-2212, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state department of revenue, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967; amd. Sec. 3, Ch. 216, L. 1971; amd. Sec. 26, Ch. 391, L. 1973.

board of equalization" for "state treasurer" in two places.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

Amendments

The 1971 amendment substituted "state

67-2214. Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the state department of revenue under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state department of revenue pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state department of revenue shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state department of revenue pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state department of revenue was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state department of revenue shall refund to such holder the amount of such second payment not in excess of the amount paid to the state department of revenue under this act.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer" in eight places.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

67-2215. Income accruing after payment or delivery. When property is paid or delivered to the state department of revenue under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963; amd. Sec. 5, Ch. 216, L. 1971; amd. Sec. 28, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer."

The 1973 amendment substituted "department of revenue" for "board of equalization."

67-2216. Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state department of revenue.

History: En. Sec. 16, Ch. 244, L. 1963; amd. Sec. 6, Ch. 216, L. 1971; amd. Sec. 29, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer" at the end of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

67-2217. Sale of abandoned property. (a) All abandoned property other than money delivered to the state department of revenue under this act shall within one (1) year after the delivery be sold by the department to the highest bidder at public sale in whatever city in the state affords in the department's judgment the most favorable market for the property involved. The state department of revenue may decline highest bid and reoffer the property for sale if the department considers the price bid insufficient. The department need not offer any property for sale if, in the department's opinion, the probable cost of sale exceeds the value of the property.

(b). * * * [Same as parent volume.]

(c) The purchaser at any sale conducted by the state department of revenue pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state department of revenue shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971; amd. Sec. 30, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization

for references to the state treasurer in seven places in subsection (a) and in two places in subsection (c).

The 1973 amendment substituted "department of revenue" for "board of equalization" and "department" for "board" throughout the section.

67-2218. Deposit of moneys. (a) All moneys received under this act, including the proceeds from the sale of abandoned property under section 67-2217, shall forthwith be deposited by the state department of revenue with the state treasurer for credit to the trust and legacy fund, public school account of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars (\$25,000) from which he shall make prompt payment of claims allowed by the department as hereinafter provided. Before making the deposit the state department of revenue shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school account, the state department of revenue may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971; amd. Sec. 31, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "All moneys" for "All funds" at the beginning of subsection (a); substituted references to the state board of equalization for references to the state treasurer in three places in subsection (a) and in one place

in subsection (b); substituted "with the state treasurer for credit to the trust and legacy fund, public school account" in the first sentence of subsection (a) for "in the public school fund"; and substituted "public school account" for "public school fund" in subsection (b).

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

67-2219. Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state department of revenue, except that no claim for less than \$10 may be filed.

History: En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971; amd. Sec. 32, Ch. 391, L. 1973; amd. Sec. 2, Ch. 195, L. 1977.

Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer" at the end of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

The 1977 amendment added the exception clause at the end of the section.

67-2220. Determination of claims. (1) The department of revenue shall consider any claim filed under this act and issue a written determination of the claim. An aggrieved claimant may appeal to the state tax appeal board, which shall hold a hearing and receive evidence concerning the claim. If a hearing is held, the board shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the board and the reasons for the board's decision. The decision shall be a public record.

(2) If the claim is allowed, the state department of revenue shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963; amd. Sec. 10, Ch. 216, L. 1971; amd. Sec. 33, Ch. 391, L. 1973; amd. Sec. 9, Ch. 155, L. 1977.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in four places in subsection (a) and in one place in subsection (b).

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

The 1977 amendment redesignated former subsections (a) and (b) as subsections (1) and (2); added "issue a written determination of the claim" to the first sentence of subdivision (1)(a); inserted "An aggrieved claimant may appeal to the state tax appeal board, which" at the beginning of the second sentence of subdivision (1)(a); substituted references to board for references to department through the section; and made minor changes in phraseology, punctuation and style.

67-2221. Judicial action upon determination. Any person aggrieved by a decision of the state tax appeal board or as to whose claim the board has failed to act within 90 days after the filing of the claim, may commence an action in the district court of Lewis and Clark County to establish his claim. The proceeding shall be brought within 90 days after the decision of the state tax appeal board or within 180 days from the filing of the claim if the board fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963; amd. Sec. 11, Ch. 216, L. 1971; amd. Sec. 34, Ch. 391, L. 1973; amd. Sec. 10, Ch. 155, L. 1977.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in four places.

The 1973 amendment substituted "department of revenue" and "department"

for "board of equalization" and "board" throughout the section.

The 1977 amendment substituted references to state tax appeal board for references to state department of revenue; and made minor changes in style.

Repealing Clause

Section 11 of Ch. 155, Laws 1977 read "Sections 84-440, 84-602, 84-609, and 84-710, R.C.M. 1947, are repealed."

67-2222. Election to take payment or delivery. The state department of revenue, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which the department deems to have a value less than the cost of giving notice and holding sale, or the department may, if the department deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: En. Sec. 22, Ch. 244, L. 1963; amd. Sec. 12, Ch. 216, L. 1971; amd. Sec. 35, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization

for references to the state treasurer in four places.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

67-2223. Examination of records. The state department of revenue, or their designated agent, may at reasonable times and upon reasonable

notice examine the records of any person if the department has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

History: En. Sec. 23, Ch. 244, L. 1963; amd. Sec. 13, Ch. 216, L. 1971; amd. Sec. 36, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "The state board of equalization, or their de-

signed agent" for "The state treasurer" at the beginning of the section; and substituted "the board" for "he" before "has reason to believe."

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

67-2224. Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state department of revenue as required under this act, the department shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971; amd. Sec. 37, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted refer-

ences to the state board of equalization for references to the state treasurer in two places.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

67-2225. Penalties. (a). * * * [Same as parent volume.]

(b) Any person who willfully refuses to pay or deliver abandoned property to the state department of revenue as required under this act shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971; amd. Sec. 38, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "state

board of equalization" for "state treasurer" in subsection (b).

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsection (b).

67-2226. Rules and regulations. The state department of revenue is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971; amd. Sec. 39, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "The

state board of equalization" for "The state treasurer" at the beginning of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

CHAPTER 23—UNIT OWNERSHIP ACT

Section

67-2302. Definition of terms.

67-2303. Application of act—execution, acknowledgment, recording of declaration.

67-2303.1. Disposition of funds from purchase of lease of unit prior to completion of construction.

- 67-2303.2. Notice of intention to sell by developer—fees.
- 67-2303.3. Examination of project by department after notice of intent to sell.
- 67-2303.4. Refund of purchaser's funds for changes in building plans—final reports.
- 67-2303.5. Final report prior to completion of project—supplemental report.
- 67-2303.6. No binding contract until purchaser has received final report.
- 67-2304. Status of the unit.
- 67-2305. Ownership of unit.
- 67-2314. Contents of declaration.
- 67-2317. Approval of declaration before recording.
- 67-2318. Recording of declaration.
- 67-2319. Floor plans recorded with declaration.
- 67-2322. Contents of deed or leases of unit.
- 67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance or lease.
- 67-2340. Separate taxation.
- 67-2342. Appraisal and assessment of units.
- 67-2343. Investigation by department—injunction.
- 67-2344. Misdemeanor.

67-2302. Definition of terms. As used in sections 67-2302 to 67-2342, unless the context requires otherwise:

(1) to (4). * * * [Same as parent volume.]

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of sections 67-2301 to 67-2342.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of sections 67-2302 to 67-2342.

(7) "Department" means the department of business regulation.

(8) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) and (b). * * * [Same as (6)(a) and (6)(b) in parent volume.]

(c) The basements, yards, gardens, parking areas and outside storage spaces, private pathways, sidewalks and private roads;

(d) to (g). * * * [Same as (6)(d) to (6)(g) in parent volume.]

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(10) "Majority" or "Majority of the unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50%) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(12) "Project" means a real estate condominium project; a plan whereby a condominium of two (2) or more units, located on property submitted to the provisions of 67-2302—67-2342, are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 67-2302 to 67-2342.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner.

History: En. Sec. 2, Ch. 120, L. 1965; amd. Sec. 1, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted subsection (5); renumbered former subsection (5) as (6); inserted subsection (7); renumbered former subsection (6) as (8); added "private pathways, sidewalks and

private roads" to paragraph (c) of present subsection (8); renumbered former subsections (7), (8) and (9) as (9), (10) and (11); inserted subsection (12); renumbered former subsections (10), (11), (12), (13) and (14) as (13), (14), (15), (16) and (17); and added the second sentence to present subsection (17).

67-2303. Application of act—execution, acknowledgment, recording of declaration. In order to submit any property to the provisions of sections 67-2302 to 67-2342, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with section 67-2314.

History: En. Sec. 3, Ch. 120, L. 1965; amd. Sec. 2, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "sole" before "owner"; inserted "or sole lessee

or all of the owners or all of the lessees" and "execute, acknowledge, and" in the first sentence; deleted "and acknowledged by the owner of the property" from the end of the second sentence; and made a minor change in style.

67-2303.1. Disposition of funds from purchase of lease of unit prior to completion of construction. (1) If units are conveyed or leased prior to the completion of construction of the building, within which such unit is located, and all of the general common elements of the project (except those general common elements forming a part of a separate building enclosing other units) as set forth in declaration filed pursuant to section 67-2314, all moneys from the sale of the units including any payments made on loan commitments from lending institutions, shall be deposited in escrow by the developer in a fund with a bank, savings and loan associa-

tion, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of sections 67-2303.2 through 67-2303.6, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with sections 67-2303.2 through 67-2303.6.

(4) If sections 67-2303.2 through 67-2303.6 have been complied with, disbursements from such fund may be made, from time to time, to pay for construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer, and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all mechanic's and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

History: En. 67-2303.1 by Sec. 3, Ch. 150, L. 1973.

and to provide for sale of units before construction to be under the control of the department of business regulation; amending sections 67-2302 through 67-2305, 67-2314, 67-2319, 67-2322 and 67-2323, R. C. M. 1947.

Title of Act

An act to amend the Unit Ownership Act to provide that lessees of a condominium unit may be treated as owners

67-2303.2. Notice of intention to sell by developer—fees. (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is fifty dollars (\$50). For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed the sum of one hundred dollars (\$100) for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of five hundred dollars (\$500).

History: En. 67-2303.2 by Sec. 4, Ch. 150, L. 1973.

67-2303.3. Examination of project by department after notice of intent to sell. (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchaser's funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with section 67-2303.1.

History: En. 67-2303.3 by Sec. 5, Ch. 150, L. 1973.

67-2303.4. Refund of purchaser's funds for changes in building plans—final reports. (1) Purchasers funds obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings, unless purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project, and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within one (1) year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

History: En. 67-2303.4 by Sec. 6, Ch. 150, L. 1973.

67-2303.5. Final report prior to completion of project—supplemental report. (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) There is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys fees, financing costs, provisions for contingency, and other costs which must be paid on or before the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers funds, equity funds, interim or permanent loan commitments, or other sources;

(iv) a copy of the executed construction contract;

(v) satisfactory evidence of a performance bond of not less than one hundred per cent (100%) of the cost of construction with a reliable surety company;

(vi) if purchasers funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under section 67-2303.1 for financing construction, which shall expressly provide for:

(A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to the preceding paragraph until the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute.

(b) The declaration provided for in section 67-2314 has been filed.

(2) If after a final report has been issued, any circumstance occurs which would render the final report misleading as to purchasers, or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

History: En. 67-2303.5 by Sec. 7, Ch. 150, L. 1973.

67-2303.6. No binding contract until purchaser has received final report. (1) The developer, or any other person offering any unit in a condominium project prior to completion of its construction, shall not enter into a binding contract or agreement for the sale or resale thereof until:

(a) a true copy of the department's final report thereon with all supplementary reports has been given to the prospective purchaser;

(b) the prospective purchaser has been given an opportunity to read the reports; and

(c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer subject to inspection at a reasonable time by the department for a period of three (3) years from the date the receipt was taken.

History: En. 67-2303.6 by Sec. 8, Ch. 150, L. 1973.

67-2304. Status of the unit. While the property is submitted to sections 67-2302 to 67-2342, a unit in the building may be individually conveyed, leased or encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: En. Sec. 4, Ch. 120, L. 1965;
amd. Sec. 9, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "leased" near the beginning of the section and made a minor change in style.

67-2305. Ownership of unit. Each unit owner shall be entitled to the exclusive ownership and possession of his unit. A unit may be jointly or commonly owned by more than one (1) person.

History: En. Sec. 5, Ch. 120, L. 1965;
amd. Sec. 10, Ch. 150, L. 1973.

Amendments

The 1973 amendment added the second sentence.

67-2314. Contents of declaration. A declaration shall contain:

(1) A description of the land, whether leased or in fee simple, on which the building is or is to be located.

(2) to (8). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 120, L. 1965;
amd. Sec. 11, Ch. 150, L. 1973.

leased or in fee simple, on which the building is or is to be located" to subsection (1).

Amendments

The 1973 amendment added "whether

67-2317. Approval of declaration before recording. Before a declaration may be recorded, it must be approved by the agent of the department of revenue in the county in which the property is located. No declaration shall be approved unless:

(1) and (2). * * * [Same as parent volume.]

History: En. Sec. 17, Ch. 120, L. 1965;
amd. Sec. 40, Ch. 391, L. 1973.

of the department of revenue in" for "county assessor of" in order to implement article VIII, section 3 of the 1972 constitution.

Amendments

The 1973 amendment substituted "agent

67-2318. Recording of declaration. When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the department of revenue or its agent in the county in which the property is located.

History: En. Sec. 18, Ch. 120, L. 1965;
amd. Sec. 41, Ch. 391, L. 1973.

partment of revenue or its agent in the county in which the property is located" at the end of the section for "county assessor" in order to implement article VIII, section 3 of the 1972 constitution.

Amendments

The 1973 amendment substituted "de-

67-2319. Floor plans recorded with declaration. Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having

jurisdiction to issue building permits. If the plans do not include a verified statement by the architect or engineer that the plans fully and accurately depict the layout, location, unit designation and dimensions of each unit as built, there shall be recorded within thirty (30) days from the date of completion of the building, or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect or registered professional engineer certifying that the floor plans previously filed, or being filed simultaneously with the amendment, fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965;
amd. Sec. 12, Ch. 150, L. 1973.

Amendments

The 1973 amendment substituted "are an accurate copy of the plan filed with and approved by the city and county offi-

cers having jurisdiction to issue building permits" for "fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed" at the end of the first sentence; and added the second sentence.

67-2322. Contents of deed or leases of unit. The deed or lease of a unit shall contain:

(1) to (4). * * * [Same as parent volume.]

(5) Any further details the grantor and grantee or lessor and lessee may consider desirable.

History: En. Sec. 22, Ch. 120, L. 1965;
amd. Sec. 13, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "or lease" in the preliminary clause; and inserted "or lessor and lessee" in subsection (5).

67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance or lease. At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: En. Sec. 23, Ch. 120, L. 1965;
amd. Sec. 14, Ch. 150, L. 1973.

Amendments

The 1973 amendment inserted "or lease" following "conveyance" and inserted "or leased" following "conveyed."

67-2340. Separate taxation. (1) Each unit with its percentage of undivided interest in the common elements shall be considered a parcel of real property subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. Neither the building nor any of the common elements shall be considered a parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the department of revenue or its agent may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

History: En. Sec. 40, Ch. 120, L. 1965;
amd. Sec. 42, Ch. 391, L. 1973.

Amendments

The 1973 amendment deleted "the prop-

erty" after "the building" in the second sentence of subsection (1); and substituted "department of revenue or its agent" for "county assessor" in subsection (2), in order to implement article VIII, sections 3 and 7 of the 1972 constitution.

67-2342. Appraisal and assessment of units. The state department of revenue shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of sections 67-2302 to 67-2342.

History: En. Sec. 42, Ch. 120, L. 1965; amd. Sec. 43, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

67-2343. Investigation by department—injunction. If the department has satisfactory evidence to indicate that any person has violated any provision of sections 67-2301 to 67-2342, it may conduct an investigation and bring an action for injunction.

History: En. Sec. 15, Ch. 150, L. 1973.

67-2344. Misdemeanor. Any person who violates any provision of sections 67-2301 to 67-2342 or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for not more than one (1) year, or both.

History: En. Sec. 16, Ch. 150, L. 1973.

TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

Chapter

1. Purpose of act—definitions, Repealed—Section 63, Chapter 323, Laws of 1973.
2. Retirement system created—who are members, Repealed—Section 63, Chapter 323, Laws of 1973.
3. Contracts between municipal corporations, counties and public agencies, Repealed—Section 63, Chapter 323, Laws of 1973.
4. Cost of service, how borne—change of status—membership—retirement fund, Repealed—Section 63, Chapter 323, Laws of 1973.
5. Board of administration—powers and duties, Repealed—Section 63, Chapter 323, Laws of 1973.
6. Prior service—allowance for—cost to cities, counties and public agencies, Repealed—Section 63, Chapter 323, Laws of 1973.
7. Management of retirement fund, Repealed—Section 63, Chapter 323, Laws of 1973.
8. Retirement—compulsory—voluntary, Repealed—Section 63, Chapter 323, Laws of 1973.
9. Service and disability retirement allowances, Repealed—Section 63, Chapter 323, Laws of 1973.
10. Reinstatement—reduction of allowance—optional modification of allowances, Repealed—Section 63, Chapter 323, Laws of 1973.
11. Death benefits, Repealed—Section 63, Chapter 323, Laws of 1973.
12. Benefits to whom paid, Repealed—Section 63, Chapter 323, Laws of 1973.
13. Miscellaneous provisions, Repealed—Section 63, Chapter 323, Laws of 1973.
14. Game wardens' retirement system, 68-1401 to 68-1402.1, 68-1405 to 68-1410, 68-1413 to 68-1415, 68-1417, 68-1419 to 68-1420.1, 68-1421, 68-1422, 68-1427, 68-1429.
15. Public employees' retirement system—definitions and general provisions, 68-1501 to 68-1504.
16. Membership—service credits, 68-1601 to 68-1608.
17. Contracts with political subdivisions—elections, 68-1701 to 68-1704.
18. Board of administration, 68-1801 to 68-1804.
19. Management of fund—employer and employee contributions, 68-1901 to 68-1907.
20. Service retirement eligibility and allowances, 68-2001 to 68-2005.
21. Disability retirement eligibility and allowance, 68-2101 to 68-2104.
22. Reduction or cancellation of allowance, 68-2201 to 68-2204.
23. Death benefits, 68-2301 to 68-2305.
24. Beneficiaries, 68-2401, 68-2402.
25. Administration of contributions and allowances, 68-2501 to 68-2514.
26. Sheriffs' retirement system, 68-2601 to 68-2629.
27. Deferred compensation plan, 68-2701 to 68-2709.

CHAPTER 1—PURPOSE OF ACT—DEFINITIONS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-101, 68-102. Repealed.

Repeal

Sections 68-101, 68-102 (Secs. 1, 2, Ch. 212, L. 1945; Sec. 1, Ch. 297, L. 1947; Sec. 1, Ch. 186, L. 1951; Sec. 1, Ch. 92, L. 1955; Sec. 1, Ch. 246, L. 1959; Sec. 1, Ch. 271,

L. 1969), relating to the Public Employees Retirement Act, were repealed by Sec. 63, Ch. 323, Laws of 1973. For new law, see secs. 68-1501 and 68-1503.

CHAPTER 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-201 to 68-203. Repealed.

Repeal

Sections 68-201 to 68-203 (Secs. 3 to 5, Ch. 212, L. 1945; Sec. 2, Ch. 297, L. 1947; Sec. 2, Ch. 186, L. 1951; Secs. 2, 3, Ch. 92, L. 1955; Sec. 2, Ch. 246, L. 1959; Sec. 1,

Ch. 150, L. 1967), relating to membership in the public employees' retirement system, were repealed by Sec. 63, Ch. 323, Laws of 1973. For new law, see secs. 68-1601 to 68-1608.

CHAPTER 3—CONTRACTS BETWEEN MUNICIPAL CORPORATIONS,
COUNTIES AND PUBLIC AGENCIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-301 to 68-303. Repealed.**Repeal**

Sections 68-301 to 68-303 (Secs. 6 to 8, Ch. 212, L. 1945; Sec. 1, Ch. 119, L. 1965), relating to contracts of the board of ad-

ministration with political subdivisions and other public agencies, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1701 to 68-1704.

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—
MEMBERSHIP—RETIREMENT FUND

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-401 to 68-405. Repealed.**Repeal**

Sections 68-401 to 68-405 (Secs. 9 to 13, Ch. 212, L. 1945; Secs. 3, 4, Ch. 297, L. 1947; Sec. 3, Ch. 186, L. 1951; Sec. 197, Ch. 147, L. 1963), relating to cost of

service and changes in status of members of the public employees' retirement system, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1603, 68-1904 and 68-2512.

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-501. Repealed.**Repeal**

Section 68-501 (Sec. 14, Ch. 212, L. 1945; Sec. 5, Ch. 297, L. 1947; Sec. 4, Ch. 186, L. 1951; Sec. 1, Ch. 224, L. 1951; Sec. 1, Ch. 225, L. 1953; Sec. 4, Ch. 92, L.

1955; Sec. 1, Ch. 233, L. 1965; Sec. 2, Ch. 271, L. 1969), relating to the board of administration, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1801 to 68-1804.

CHAPTER 6—PRIOR SERVICE—ALLOWANCE FOR—COST TO CITIES,
COUNTIES AND PUBLIC AGENCIES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-601 to 68-603. Repealed.**Repeal**

Sections 68-601 to 68-603 (Secs. 15 to 17, Ch. 212, L. 1945), relating to allowance of

credit for prior service, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1601 to 68-1608.

CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-701 to 68-710. Repealed.**Repeal**

Sections 68-701 to 68-710 (Sec. 18, Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; Sec. 1,

Ch. 222, L. 1967; Sec. 1, Ch. 227, L. 1967; Sec. 1, Ch. 98, L. 1969), relating to management of the retirement fund, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1901 to 68-1907.

CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-801, 68-802. Repealed.**Repeal**

Sections 68-801, 68-802 (Sec. 19, Ch. 212, L. 1945; Sec. 7, Ch. 297, L. 1947; Sec. 5, Ch. 186, L. 1951; Sec. 1, Ch. 35, L. 1955; Sec. 4, Ch. 246, L. 1959; Sec. 2, Ch. 227, L. 1967; Sec. 1, Ch. 244, L. 1969; Sec. 3,

Ch. 271, L. 1969; Sec. 1, Ch. 116, L. 1971), relating to retirement by a public employee, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-1901 to 68-1907 and 68-2001 to 68-2005.

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-901, 68-902. Repealed.**Repeal**

Sections 68-901, 68-902 (Sec. 20, Ch. 212, L. 1945; Sec. 6, Ch. 186, L. 1951; Sec. 5, Ch. 246, L. 1959; Sec. 1, Ch. 207, L. 1963; Sec. 3, Ch. 227, L. 1967; Sec. 4, Ch. 271,

L. 1969; Secs. 2, 3, Ch. 116, L. 1971), relating to service and disability retirement allowances, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2002 to 68-2005, 68-2103 and 68-2104.

CHAPTER 10—REINSTATEMENT—REDUCTION OF ALLOWANCE—
OPTIONAL MODIFICATION OF ALLOWANCES

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1001 to 68-1005. Repealed.**Repeal**

Sections 68-1001 to 68-1005 (Secs. 21 to 25, Ch. 212, L. 1945; Secs. 6 to 8, Ch. 92, L. 1955; Secs. 4, 5, Ch. 227, L. 1967), relating to modification and reduction of

allowances and reinstatement to former employees, were repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2201 to 68-2204.

CHAPTER 11—DEATH BENEFITS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1101. Repealed.**Repeal**

Section 68-1101 (Sec. 26, Ch. 212, L. 1945; Sec. 7, Ch. 186, L. 1951; Sec. 2, Ch. 225, L. 1953; Sec. 9, Ch. 92, L. 1955; Sec. 2, Ch. 207, L. 1963; Sec. 1, Ch. 110, L.

1965; Sec. 6, Ch. 227, L. 1967), relating to death benefits, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2301 to 68-2305.

CHAPTER 12—BENEFITS TO WHOM PAID

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1201. Repealed.**Repeal**

Section 68-1201 (Sec. 27, Ch. 212, L. 1945), relating to the beneficiary of death

benefits, was repealed by Sec. 63, Ch. 323, Laws 1973. For new law, see secs. 68-2401 and 68-2402.

CHAPTER 13—MISCELLANEOUS PROVISIONS

(Repealed—Section 63, Chapter 323, Laws of 1973)

68-1301 to 68-1320. Repealed.**Repeal**

Sections 68-1301 to 68-1320 (Secs. 28 to 33, 35 to 41, Ch. 212, L. 1945; Secs. 1, 2, Ch. 40, L. 1947; Secs. 8, 9, Ch. 297, L. 1947; Secs. 1 to 4, Ch. 132, L. 1953; Secs. 10 to 12, Ch. 92, L. 1955; Sec. 1, Ch. 181,

L. 1961; Sec. 1, Ch. 214, L. 1967; Sec. 5, Ch. 271, L. 1969; Sec. 4, Ch. 116, L. 1971), miscellaneous provisions relating to the Public Employees' Retirement Act, were repealed by Sec. 63, Ch. 323, Laws 1973.

CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

Section

- 68-1401. Definitions.
- 68-1402. State game warden defined.
- 68-1402.1. Retirement system.
- 68-1404. [Transferred.]
- 68-1405. Retirement account.
- 68-1406. Board to make rules—actuarial data.
- 68-1407. Membership.
- 68-1408. State game wardens' retirement account.
- 68-1409. Member's contribution.
- 68-1410. State's contribution.
- 68-1413. Service retirement allowance.
- 68-1414. Disability retirement allowance.
- 68-1415. Involuntary retirement allowance.
- 68-1417. Payments upon employment-related death.
- 68-1419. Monthly payments of retirement allowances.
- 68-1420. Exemption from taxes and execution.
- 68-1420.1. Withholding of group insurance premium from retirement benefit.
- 68-1421. Nomination of beneficiary.
- 68-1422. Military service.
- 68-1427. Optional retirement allowance.
- 68-1429. Ineligibility for public employees' retirement system—transfer of membership.

68-1401. Definitions. Unless the context requires otherwise, the following definitions apply in this act:

(1) "Accumulated deductions" means the total of the amount deducted from the salary of a contributor, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(2) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, duly acknowledged and filed with the board.

(3) "Retired state game warden" means any person in receipt of a retirement allowance under this act.

(4) "Board" means the public employees' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(6) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that

they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(7) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(8) "Account" means the Montana state game wardens' retirement account in the agency fund.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member's annuity" means payments for life derived from contributions made by the contributor.

(11) "Optional retirement age" means the age at which a contributor may retire after 20 years service or more, provided that the contributor has reached the age of 55 years.

(12) "Retirement age" means the age at which a member retires as prescribed in 68-1411.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state from department of fish and game moneys.

History: En. Sec. 1, Ch. 130, L. 1963; amd. Sec. 16, Ch. 326, L. 1974; amd. Sec. 1, Ch. 8, L. 1977; amd. Secs. 1, 4, Ch. 132, L. 1977; amd. Sec. 1, Ch. 330, L. 1977; amd. Sec. 4, Ch. 332, L. 1977.

Compiler's Notes

This section was amended four times in 1977 by Chs. 8, 132, 330, and 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1974 amendment substituted "department of fish and game" in subdivision (12) for "Montana fish and game department"; and made minor changes in punctuation and style.

Chapter 8, Laws of 1977, substituted "person nominated to receive benefits under this chapter by a member's written designation" in subdivision (2) for "person or persons having an insurable interest in his life as he shall nominate by written designation"; rewrote subdivision (7) which read: "Actuarial equivalent" means the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally

designated person, based on the person's attained age and sex at the time the option becomes available"; substituted "as prescribed in 68-1411" at the end of subdivision (12) for "after twenty-five (25) years of creditable service as a state game warden of the department of fish and game"; deleted an ending sentence in subdivision (12) reading "All members must retire at age sixty (60)"; substituted "state from department of fish and game" in subdivision (14) for "state of Montana fish and game"; and made minor changes in phraseology, punctuation and style.

Chapter 132, Laws of 1977, substituted "public employees' retirement board" in subdivision (4) for "Montana state game wardens' retirement board"; and made minor changes in style.

Chapter 330, Laws of 1977, deleted "in the earmarked revenue fund" at the end of subdivision (14).

Chapter 332, Laws of 1977, substituted "person nominated to receive benefits under this chapter by a member's written designation" in subdivision (2) for "person or persons having an insurable interest in his life as he shall nominate by written designation"; added the last two sentences of subdivision (6); made the same change in subdivision (7) as made by Chapter 8; and made minor changes in phraseology and style.

68-1402. State game warden defined. Whenever used in this act, state game warden means all state fish and game wardens hired by the department of fish and game and includes all warden supervisory personnel

whose salaries or compensation is paid out of the department of fish and game moneys.

History: En. Sec. 2, Ch. 130, L. 1963; amd. Sec. 2, Ch. 8, L. 1977; amd. Sec. 2, Ch. 330, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 8 and once by Ch. 330. Since the amendments do not appear to conflict, the code commissioner has made a com-

posite section embodying the changes made by both amendments.

Amendments

Chapter 8, Laws of 1977, substituted "department of" before "fish and game moneys" near the end of the section for "Montana"; and made a minor change in style.

Chapter 330, Laws of 1977, deleted "in the earmarked revenue fund" at the end of the section.

68-1402.1. Retirement system. There is a retirement system known as the Montana state game wardens' retirement system, which is governed by the provisions of this chapter.

History: En. 68-1402.1 by Sec. 3, Ch. 8, L. 1977.

Title of Act

An act to generally revise and clarify the laws relative to game wardens' retirement and death and disability benefits;

amending sections 68-1401, 68-1402, 68-1405, 68-1406, 68-1407, 68-1409, 68-1410, 68-1413, 68-1415, 68-1417, 68-1421, 68-1422, 68-1425, 68-1427, and 68-1429; and enacting a new section 68-1402.1 to officially recognize and name the Montana state game wardens' retirement system.

68-1403. Repealed.

Repeal

Section 68-1403 (Sec. 3, Ch. 130, L. 1963), relating to the state game wardens'

retirement system, was repealed by Sec. 103, Ch. 326, Laws of 1974.

68-1404. [Transferred.]

Compiler's Notes

Section 17, Ch. 326, Laws of 1974 renumbered this section as sec. 82A-210.1.

68-1405. Retirement account. (1) The following shall be paid to the board and shall be credited by the board to the account:

(a) all contributions by the state from department of fish and game moneys;

(b) all contributions by the state game wardens; and

(c) all interest on and increase of the investments and moneys in the account.

(2) The board is the trustee of all moneys collected for the retirement system and has exclusive control of the administration of the account. The state treasurer is custodian of the account, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

(3) Whenever there is on deposit in the account a sum in excess of \$25,000, such excess shall be invested by the board of investments as part of the long-term investment fund. The part of the account not in excess of \$25,000 shall be invested by the board of investments as part of the short-term investment fund when so directed by the board.

(4) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members

and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(5) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. Sec. 5, Ch. 130, L. 1963; amd. Sec. 100, Ch. 326, L. 1974; amd. Sec. 4, Ch. 8, L. 1977; amd. Sec. 2, Ch. 132, L. 1977; amd. Sec. 3, Ch. 330, L. 1977; amd. Sec. 5, Ch. 332, L. 1977.

Compiler's Notes

This section was amended four times in 1977 by Chs. 8, 132, 330, and 332. The code commissioner has made a composite section embodying the changes made by some, but not all, amendments.

Amendments

The 1974 amendment substituted "board of investments" throughout the section for "state board of land commissioners."

Chapter 8, Laws of 1977, inserted the subsection and subdivision designations; inserted the introductory paragraph of subsection (1); inserted "from department of" in subdivision (1)(a); deleted "as designated by section 68-1401 above, in the amount hereinafter specified" at the

end of subdivision (1)(b); deleted "shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund" at the end of subdivision (1)(b); deleted references to Montana state game wardens' retirement before "account" and "board" in subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 132, Laws of 1977, substituted "public employees' retirement board" at the end of subsection (3) for "Montana game wardens' retirement board"; and made minor changes in style.

Chapter 330, Laws of 1977, deleted "in the earmarked revenue fund" after "monies" near the beginning of the section.

Chapter 332, Laws of 1977, made the same changes as Chapter 8; inserted "is the trustee of all moneys collected for the retirement system and has" in subsection (2); added subsections (4) and (5); and made minor changes in style.

68-1406. Board to make rules—actuarial data. (1) The board is charged with the proper administration, operation, and enforcement of this act. The board may make such rules as it considers necessary and shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

(2) The board shall keep such data as is necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and the beneficiaries and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963; amd. Sec. 5, Ch. 8, L. 1977; amd. Sec. 6, Ch. 332, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 8 and once by Ch. 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 8, Laws of 1977, inserted the

subsection designations; deleted "within the limitations of this act" near the beginning of the first sentence of subsection (1); deleted "regulations" after "rules" in the second sentence of subsection (1); deleted "of the account" after "beneficiaries" near the end of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 332, Laws of 1977, made the same changes as Chapter 332; and added the last sentence to subsection (1).

68-1407. Membership. Except as provided in 68-1429, each state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid out of the department of fish and game moneys and who is assigned to law enforcement in the department of fish and game shall become a member of the retirement system when first becoming a state game warden. If a person becomes a state game warden after July 1, 1963, who was at any time before July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. Except as provided in 68-1429, all state game wardens shall be members of the retirement system so long as actively employed in that capacity.

History: En. Sec. 7, Ch. 130, L. 1963; amd. Sec. 18, Ch. 326, L. 1974; amd. Sec. 6, Ch. 8, L. 1977; amd. Sec. 4, Ch. 330, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 8 and once by Ch. 330. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment deleted "established by this act, on July 1, 1963, and

thereafter" after "retirement system" in the first sentence; deleted a former second sentence reading "Contributions by members under this act shall commence with the first payroll after July 1, 1963"; and made minor changes in phraseology.

Chapter 8, Laws of 1977, substituted "department of fish and game" near the middle of the first sentence for "Montana fish and game"; and made minor changes in phraseology and punctuation.

Chapter 330, Laws of 1977, inserted "Except as provided in 68-1429" at the beginning of the first and last sentences; and made minor changes in phraseology.

68-1408. State game wardens' retirement account. There is a state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to that account. A state game warden shall be allowed service credit hereunder for any service prior to July 1, 1963, including other Montana state, county, or city service.

History: En. Sec. 8, Ch. 130, L. 1963; amd. Sec. 19, Ch. 326, L. 1974.

Amendments

The 1974 amendment deleted from the beginning of the second sentence a clause reading "In addition thereto, all moneys any state game warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created";

inserted "prior to July 1, 1963" after "any service" in the second sentence; deleted former third and fourth sentences reading "The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by the state game wardens or as deputy game wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds"; and made minor changes in punctuation and phraseology.

68-1409. Member's contribution. Every member is required to contribute into the account a sum equal to 7% of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account. The retirement allowance of any member who contributes after 25 years of service shall be increased by an amount which is the actuarial equivalent of an annuity based on the member's contributions and the state contributions made after 25 years of service and standing to the member's credit at the time of his retirement.

History: En. Sec. 9, Ch. 130, L. 1963; amd. Sec. 7, Ch. 8, L. 1977.

Amendments

The 1977 amendment substituted "which is the actuarial equivalent of an annuity based on the member's contributions and

the state contributions made after 25 years of service and" in the second sentence for "as calculated on an actuarial equivalent of the member's annuity and the state annuity"; and made minor changes in phraseology, punctuation and style.

68-1410. State's contribution. (1) Each month the state treasurer shall pay to the account, out of the department of fish and game moneys, a sum equal to 7% of the total of all members' salaries and, out of the moneys collected as fines and forfeited bonds under the provisions of 26-121, a sum equal to 4% of the total of all members' salaries.

(2) The board may assess and the department of administration shall collect a fee from the department of fish and game for the purpose of defraying the expenses of administering this act. The fee may not exceed .3% of the total of all members' salaries.

History: En. Sec. 10, Ch. 130, L. 1963; amd. Sec. 8, Ch. 8, L. 1977; amd. Sec. 5, Ch. 330, L. 1977; amd. Sec. 1, Ch. 578, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 8, 330, and 578. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

Chapter 8, Laws of 1977, redesignated subsections (a) and (b) as subsections (1) and (2); substituted "department of" for "Montana" before "fish and game moneys" in subsection (1); substituted "total of all members' salaries" in subsection (1) for "total amount of each Montana

game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act"; inserted "department of" near the end of the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 330, Laws of 1977, deleted "in the earmarked revenue fund" after "fish and game moneys" near the beginning of the section and near the end of the section.

Chapter 578, Laws of 1977, made the same changes in subsection (1) that were made by Chapter 8; added "and, out of the moneys collected as fines and forfeited bonds under the provisions of 26-121, a sum equal to 4% of the total of all members' salaries"; and rewrote subdivision (2). For prior version, see parent volume.

68-1413. Service retirement allowance. Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity. The member's annuity is the actuarial equivalent of his accumulated deductions at the time of his retirement. The state annuity is an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half of his final salary with 25 years of service.

History: En. Sec. 13, Ch. 130, L. 1963; amd. Sec. 1, Ch. 111, L. 1967; amd. Sec. 9, Ch. 8, L. 1977.

Amendments

The 1977 amendment substituted "accu-

mulated deductions" in the second sentence for "aggregate contributions"; deleted "average" before "final salary" in the last sentence; and made minor changes in style, punctuation and phraseology.

68-1414. Disability retirement allowance. If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his

disability retirement. If the total disability is a direct result of any service to the department of fish and game in line of duty, and the contributor has had over ten (10) years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half ($\frac{1}{2}$) of his average final salary.

History: En. Sec. 14, Ch. 130, L. 1963;
amd. Sec. 20, Ch. 326, L. 1974.

Amendments

The 1974 amendment made minor changes in punctuation and phraseology.

68-1415. Involuntary retirement allowance. If a contributor is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing a written application with the board, be paid whichever of the following allowances that he elects:

- (1) the full amount of his accumulated deductions; or
- (2) a member's annuity which is the actuarial equivalent of his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity.

History: En. Sec. 14, Ch. 130, L. 1963;
amd. Sec. 10, Ch. 8, L. 1977.

Amendments

The 1977 amendment substituted "filing a written application with the board" for "filing of an application in the manner herein provided for retirement"; substituted "annuity which is the actuarial equivalent of his accumulated deductions plus an annuity which is the actuarial

equivalent of the present value of the state annuity" in subdivision (2) for "annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit"; and made minor changes in phraseology, punctuation and style.

68-1417. Payments upon employment-related death. If the board finds that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary, consisting of:

- (1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and
- (2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable.

History: En. Sec. 17, Ch. 130, L. 1963;
amd. Sec. 11, Ch. 8, L. 1977; amd. Sec. 2,
Ch. 578, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 8 and once by Ch. 578. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

Amendments

Chapter 8, Laws of 1977, deleted "standing to his credit" after "deductions" near the end of subdivision (1); deleted "the

actuarial equivalent of" at the beginning of subdivision (2); substituted "Workers' Compensation Act" for "Workmen's Compensation Act" in subdivision (2) and made minor changes in phraseology, punctuation and style.

Chapter 578, Laws of 1977, redesignated subdivisions (a) and (b) as subdivisions (1) and (2); deleted "standing to his credit" after "accumulated deductions" near the end of subdivision (1); deleted "the actuarial equivalent of" at the beginning of subdivision (2); substituted "Workers' Compensation Act" in subdivision (2) for "Workmen's Compensation

Act"; deleted "provided that in no event shall a beneficiary be paid for more than fifteen (15) years or past the age of sixty-five (65) years, whichever is the greater"

at the end of subdivision (2); and made minor changes in phraseology, punctuation and style.

68-1419. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and may not be increased, decreased, revoked or repealed unless by act of the legislature of the state of Montana. However, there may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. Sec. 19, Ch. 130, L. 1963; amd. Sec. 7, Ch. 332, L. 1977.

Amendments

The 1977 amendment added the last sentence; and made minor changes in phraseology.

68-1420. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 68-1420.1.

History: En. Sec. 20, Ch. 130, L. 1963; amd. Sec. 5, Ch. 214, L. 1977.

Amendments

The 1977 amendment added the exception at the end of the section; and made minor changes in punctuation.

68-1420.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-1420.1 by Sec. 6, Ch. 214, L. 1977.

68-1421. Nomination of beneficiary. Each contributor may name his beneficiary by written designation, duly acknowledged and filed with the board, and may change the beneficiary in like manner. The designation and all changes may be filed with the board.

History: En. Sec. 21, Ch. 130, L. 1963; amd. Sec. 12, Ch. 8, L. 1977; amd. Sec. 6, Ch. 330, L. 1977.

Amendments

Chapter 8, Laws of 1977, substituted "may be filed" in the last sentence for "must be filed"; and made minor changes in phraseology and punctuation.

Chapter 330, Laws of 1977, deleted "up until, but not after, the time of retirement" at the end of the section.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 8 and once by Ch. 330. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

68-1422. Military service. (1) A state game warden inducted into the armed forces of the United States has the option to:

- (a) continue his payments into the account; or
- (b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a state game warden.

History: En. Sec. 22, Ch. 130, L. 1963; amd. Sec. 13, Ch. 8, L. 1977.

Amendments

The 1977 amendment deleted "now in or hereafter" before "inducted" near the beginning of subsection (1); deleted "upon his return to state game warden status, and such repayments must be made" be-

fore "within 2 years" in subdivision (1) (b); substituted subsection (2) for "provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance"; and made minor changes in phraseology, punctuation and style.

68-1425. Repealed.

Repeal

Section 68-1425 (Sec. 25, Ch. 130, L. 1963; Sec. 14, Ch. 8, L. 1977), relating to

subrogation, was repealed by Sec. 22, Ch. 332, Laws 1977.

68-1427. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

(a) Option 1—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 2—upon his death, one-half of his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963; amd. Sec. 15, Ch. 8, L. 1977.

Amendments

The 1977 amendment inserted the subsection and subdivision designations;

inserted "A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time" at the beginning of subsection (1); deleted "having an insurable interest in

his life" after "paid to the person" in subdivisions (2)(a) and (2)(b); and made minor changes in phraseology, punctuation and style.

68-1429. Ineligibility for public employees' retirement system—transfer of membership. (1) After July 1, 1963, each state game warden must become a member of this retirement system, and thereafter no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens.

(2) A person who is a member of the retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement in the fish and game department may retain membership in the retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

(3) A person who is a member of the public employees' retirement system who transfers to a position as a state game warden may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

History: En. Sec. 29, Ch. 130, L. 1963; amd. Sec. 16, Ch. 8, L. 1977; amd. Sec. 7, Ch. 330, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 8 and once by Ch. 330. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 8, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 330, Laws of 1977, designated the former section as subsection (1); inserted "new state employee appointed as a" in the middle of subsection (1); and added subsections (2) and (3).

CHAPTER 15—PUBLIC EMPLOYEES' RETIREMENT SYSTEM—DEFINITIONS AND GENERAL PROVISIONS

Section

68-1501. **Purpose of act.**

68-1502. **Retirement system created.**

68-1503. **Definitions.**

68-1504. **Short title.**

68-1501. Purpose of act. The purpose of this act is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship, or prejudice, be replaced by more capable employees, and to that end providing a retirement system consisting of retirement compensation and death benefits.

History: En. 68-1501 by Sec. 2, Ch. 323, L. 1973.

Title of Act

An act for the codification and general revision of the laws relating to the public employees' retirement system and re-

pealing sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R. C. M. 1947.

68-1502. Retirement system created. A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system.

History: En. 68-1502 by Sec. 3, Ch. 323, L. 1973.

68-1503. Definitions. Unless the context requires otherwise, in this act:

(1) "Retirement system" means the public employees' retirement system created by this act.

(2) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of its income or which prepares, approves and submits salary statements of its employees to the department of administration, state auditor and state treasurer for payment.

(3) "Member" means any person included in the membership of the retirement system set forth in section 68-1601 and not excluded in section 68-1602, 68-1603 or 68-2510.

(4) "Board" means the public employees' retirement board provided for in section 82A-210.

(5) "Employee" means any person employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person deemed such pursuant to section 68-2510.

(6) "Retirement fund" means the public employees' retirement account in the agency fund.

(7) "Service" means employment of an employee, except as provided in sections 68-1604 and 68-1605.

(8) "Prior service" shall mean all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of the state of Montana.

(9) "Beneficiary" means the person so designated pursuant to section 68-2401.

(10) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislative assembly and the lieutenant governor of the state of Montana for any year shall be deemed to be that portion of the product of the daily compensation for such position multiplied by three hundred sixty (360), upon which such member elects to pay normal contributions during the year.

(11) "Final compensation" means a member's highest average annual compensation during any three (3) consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or

months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(12) "Regular interest" means interest at the rate set from time to time by the board.

(13) "Normal contributions" means contributions required by members under this act and any optional contributions, made under the provisions of sections 68-1605 and 68-1906.

(14) "Additional contributions" means contributions by members under the provisions of section 68-1903.

(15) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(16) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(17) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(18) "Pension" means payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting employers, from the funds of such contracting employers, as provided in this act.

(19) "Annuity" means payments for life derived from contributions made by a member as provided in this act.

(20) "Retirement allowance" means the periodic benefit payable following service, early or disability retirement.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(22) "Actuary" means the actuary retained by the board in accordance with section 68-1804.

(23) "Benefit" means the retirement allowance, survivorship allowance, death benefit or refund of accumulated contributions provided by this act.

(24) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(25) "Employer" means the state of Montana, its university or any of the colleges, schools, components or units thereof for the purposes of this act, or any political subdivision or governmental entity which has contracted to come into the system.

(26) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislative assembly and a lieutenant governor of the state of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to section 68-1503 (10).

(27) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in Title 68, chapter 23.

(28) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member

was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(29) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to section 68-2504 and from contracting employers pursuant to the contracts between them and the board.

(30) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board shall deem necessary.

(31) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this act.

(32) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, means disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(33) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

History: En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 8, Ch. 332, L. 1977.

in section 68-1602, 68-1603 or 68-2510" in subdivision (3) for "set forth in section 68-1602 and not excluded in section 68-1603 or 68-2510."

The 1977 amendment added the last two sentences of subdivision (11).

Amendments

The 1974 amendment substituted "set forth in section 68-1601 and not excluded

68-1504. Short title. This act may be cited as "The Public Employees' Retirement System Act."

History: En. Sec. 1, Ch. 323, L. 1973.

CHAPTER 16—MEMBERSHIP—SERVICE CREDITS

Section

68-1601. Membership.

68-1602. Exclusions.

68-1603. Termination of membership.

68-1604. Absence not included in time of service.

68-1605. Absence in military service.

68-1605.1. Election to qualify military service for full credit.

68-1606. Absence due to illness or injury.

68-1607. Qualification of service with employer.

68-1608. Qualification of prior service not previously credited.

68-1601. Membership. (1) All employees shall become members on the first day of employment. Each employee shall file with the board such information affecting his status as a member of the retirement system as the board may require.

(2) Every employee who re-enters service shall become a member unless he has had an original election of exemption from membership and his service was not interrupted by a break of more than one (1) month. A seasonal employee who has had an original election of exemption from membership will not be subject to the requirement regarding the break in service while continuing in his original employment and employed on a seasonal basis, but upon termination of employment to accept new

employment or absence of more than one (1) month in returning to original employment in any ensuing season, such a seasonal employee shall become a member of the retirement system upon re-entry.

(3) Time during which an employee of a school district is absent from service during official vacation shall be counted as service in determining eligibility for membership under this act.

History: En. 68-1601 by Sec. 5, Ch. 323, L. 1973.

68-1602. Exclusions. The following persons may not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless there is a written contract which specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 60 working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 68-1607 and 68-1608;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) (a) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in the other system for service, it being the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 68-1605.1; a member of the retirement system who, because of his employment by the state, is required to become a member of any other system described in this subsection shall be considered, solely for the purposes of making normal contributions, as permanently separated from service; exclusion under this subsection (8)(a) is subject to the following exceptions:

(i) when an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the Internal Revenue Service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for purposes of computing the employer or employee contributions to the retirement system;

(ii) for the purpose of subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this act are not considered, because of such receipt, members of any other retirement or pension system;

(b) the accumulated contributions of a member who dies after becoming a member of any other system described in subsection (8) and before receiving his accumulated contributions shall be paid to the beneficiary nominated by him to receive any death benefit payable under 68-2301;

(c) employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in subsection (8), shall be repaid to the employer;

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed by the legislature during the legislative session who do not file with the board an election in writing to become members.

History: En. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977.

Amendments

The 1974 amendment added the proviso at the end of subdivision (8).

Chapter 16, Laws of 1975, added subdivision (12).

Chapter 128, Laws of 1975, substituted "except when such service qualifies, is applied for, and purchased pursuant to section 68-1605.1" near the beginning of subdivision (8) for "and no person shall receive such credit under any circumstances."

The 1977 amendment substituted references to "board" for references to "board of administration" throughout the section; deleted "by his own election" after "excluded from membership" near the middle

of the first sentence of subdivision (6); inserted "and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member" in the first sentence of subdivision (6); substituted "prescribed in 68-1607 and 68-1608" at the end of subdivision (6) for "of the balance of this subsection"; deleted "Such a person must file an election to become a member with the board of administration no later than July 1, 1975; provided, that any such person who is not an employee on July 1, 1974, may make such filing no later than one year after subsequently becoming an employee. In either event, such person must thereupon pay to the retirement system the amount which he and his employer would have contributed had he not been so excluded plus interest which would have accumulated thereon. All benefits payable thereafter to such person shall be the same as if such person had never filed

an election not to be a member" from the end of subdivision (6); divided former subdivision (8) into (8)(a) and (8)(a)(i); deleted "the accumulated contributions of any member who shall have died after becoming a member of such other system and before receiving said accumulated contributions, shall be paid to the beneficiary nominated by him to receive any death benefit payable under section 68-2301; employer contributions on the basis of compensation earned by members after the effective date of termination of membership herein because of the membership in such other system, shall be repaid to the employer; for the purpose of this section persons receiving pensions, retirement allowances or other payments, from any source, on account of employment other

than as an employee as defined in this act, shall not be considered, because of such receipts, members of any other retirement or pension system; provided however" after "following exceptions" at the end of (8)(a); substituted "may" for "shall" after "wages" near the end of subdivision (8)(a)(i); added subdivisions (8)(a)(ii), (8)(b), and (8)(c); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 16, Laws 1975 provided the act should be in effect on its passage and approval and applies to employees of the forty-fourth and subsequent legislatures. Approved February 21, 1975.

68-1603. Termination of membership. If any part of a member's accumulated normal contributions are refunded pursuant to section 68-1905, he ceases to be a member and all membership service to his credit is canceled. Any person who is retired ceases to be a member.

History: En. 68-1603 by Sec. 7, Ch. 323, L. 1973.

68-1604. Absence not included in time of service. Except as provided in 68-1605, 68-1605.1, and 68-1606, time during which a member is absent from compensated employment with an employer may not be allowed in computing service.

History: En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977.

Amendments

The 1977 amendment inserted "68-1605.1"; substituted "may" for "shall" near the end of the section; and made a minor change in style.

68-1605. Absence in military service. (1) Any period of absence from compensated employment with an employer for one of the following reasons, occurring either during a war involving the United States as a belligerent or during any other national emergency and 90 days thereafter, is considered service for the purpose of qualification for retirement and death benefits but not for calculation of retirement benefits:

(a) by reason of having been ordered on duty with the armed forces of the United States;

(b) by reason of voluntary service in said forces or on ships operated by or for the United States government; or

(c) by reason of direct assignment to the department of defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

(2) Any member so absent has the right to contribute to the retirement system, either during his period of absence or upon his return to service, at times and in the manner fixed by the board, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence. If he does contribute, he shall receive credit for service for such time in the same manner as if he

had not been absent from service. Whenever a member elects to continue his contributions, the employer shall thereupon contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) Any member so absent loses the right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 68-1905.

History: En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977.

Amendments

The 1977 amendment divided the section into numbered subsections and redesignated former subdivisions (1) through (3) as subdivisions (a) through (c); deleted "war or" after "department of" in subdivision (c); and made minor changes in phraseology, punctuation and style.

nated former subdivisions (1) through (3) as subdivisions (a) through (c); deleted "war or" after "department of" in subdivision (c); and made minor changes in phraseology, punctuation and style.

68-1605.1. Election to qualify military service for full credit. (1) A member with ten (10) years or more of state service qualified under this act may at any time prior to retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits up to a maximum of five (5) years if he is not otherwise eligible to receive credit for this same service pursuant to section 68-1605. To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his eleventh year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he so contributes. He may not qualify more of this service than he has state service in excess of ten (10) years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal service retirement benefit he may not qualify his military service under subsection (1) of this section; provided, however, that a member, who is serving or has served in the military reserves with the expectation of receiving a military service pension, may qualify his active military service under subsection (1) of this section if his active duty in the armed forces of the United States is not more than twenty-five per cent (25%) of the total sum of all years of military service including reserve and active duty time.

History: En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975.

Amendments

The 1975 amendment inserted the sub-

section (1) designation; substituted "qualified under this act" for "credited under this act" near the beginning of subsection (1); and added subsection (2).

68-1606. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for retirement benefits or survivorship allowances, but not for the calculation of such benefits, unless the member complies with subsections (2) through (4) of this section, in which case the absence shall be considered as time spent in service for both the calculation and qualification of benefits.

(2) Any member absent because of an employment-related injury which entitles him to workers' compensation payments may contribute to the retirement system, upon his return to service, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence. Whenever a member elects to continue his contributions, the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) A member must file with the board, within 6 months after he returns to service, a written notice of his intent to pay the contributions under subsection (2). The employer shall provide the employee with written notice of the provisions of this section which shall be signed by the employee and returned to the employer, who shall provide a copy to the board.

(4) Payment of the employee's contributions which are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis not to exceed 24 monthly payments.

(5) A member so absent loses his right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 68-1905.

History: En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977.

Amendments

The 1977 amendment designated the former section as subsection (1); inserted "not to exceed 5 years" in subsection (1);

added "unless the member complies with subsections (2) through (4) of this section, in which case the absence shall be considered as time spent in service for both the calculation and qualification of benefits" to the end of subsection (1); and added subsections (2) through (5).

68-1607. Qualification of service with employer. (1) Subject to the provisions of this section, any person who has service with an employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board. The person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been an employer and the interest which would have accumulated thereon to the time of such payment; provided, that the employer may pay the employer's portion including accrued interest. The employer must establish a policy as to the retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination will be subject to the determination of the board. All successful appeals will obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing such appeal with the board. Each appeal will be heard on its individual merits and will not bind the employer to pay all retroactive payments for all former and present employees.

(2) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board will determine the eligibility of all service credit requests as prescribed in 68-1803.

(3) Payment may be made in one sum at the time of such filing or on an installment basis. Installment payments shall not exceed twenty-four (24) monthly payments. When the monthly payment, exceeds five percent (5%) of compensation in the initial month of payment, the board may allow smaller payments over a period to exceed twenty-four (24) months. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter, forfeit such person's right to make any further installment payments, unless permission is granted to do so by the board.

History: En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977.

Amendments

The 1974 amendment substituted the last three sentences for "except that failure to make installment payments of at least ten per cent (10%) of compensation in any payroll period thereafter shall forfeit such person's right to make any further installments"; and made minor changes in phraseology and punctuation.

The 1975 amendment divided the section into subsections; substituted "an employer" for "contracting employer" throughout

the section; added the last four sentences of subsection (1); added "unless permission is granted to do so by the board of administration" to the end of subsection (2); and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted "no later than July 1, 1975, provided that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member" from the end of the first sentence of subsection (1); inserted subsection (2); redesignated former subsection (2) as subsection (3); and made minor changes in phraseology and style.

68-1608. Qualification of prior service not previously credited. If a member otherwise has not less than 5 years of creditable service of which not less than 3 years have been as a contributing member of the retirement system, he shall be granted credit for any prior service not previously granted upon his filing written notice thereof with the board. Proper certification of the prior service must be certified by the employer and furnished by the member.

History: En. 68-1608 by Sec. 13, Ch. 323, L. 1973; amd. Sec. 4, Ch. 128, L. 1975; amd. Sec. 2, Ch. 89, L. 1977; amd. Sec. 4, Ch. 99, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 89 and once by Ch. 99. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1975 amendment reduced the creditable service requirement from ten years to five years; and made a minor change in punctuation.

Chapter 89, Laws of 1977, deleted "no later than July 1, 1975, provided, that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member and further" after "board" in the middle of the first sentence; and substituted "certified by the employer and

furnished by the member" at the end of the second sentence for "furnished."

Chapter 99, Laws of 1977, inserted "If a member otherwise has not less than 5 years of creditable service of which not less than 3 years have been as a contributing member of the retirement system, he shall be granted" at the beginning of the section; deleted "shall be granted to a member" after "service not previously granted" near the middle of the first sentence; substituted "with the board no later than July 1, 1975, or within 1 year after becoming an employee, whichever is later" at the end of the first sentence for "with the board of administration no later than July 1, 1975, provided, that any such person who is not a member on July 1, 1974, may make such filing no later than one (1) year after subsequently becoming a member and further provided he otherwise has not less than five (5) years of creditable service of which not less than three (3) years have been as a contributing member of the retirement system"; and substituted "the prior" for "such" in the last sentence.

CHAPTER 17—CONTRACTS WITH POLITICAL SUBDIVISIONS—ELECTIONS

Section

- 68-1701. Contracts with political subdivisions—election—ballot.
68-1702. Request by individual employee for employer to participate.
68-1703. Conversion of local or state retirement plan.
68-1704. Tax levy to meet employer's obligations.

68-1701. Contracts with political subdivisions—election—ballot. Any municipal corporation, county or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of said contracting employer, subject to the provisions of this act. The contract may include any provisions which are consistent with this act and necessary in the administration of the retirement system as it affects the contracting employer and its employees. The approval and termination of the contract shall be subject to the following provisions, in addition to the other provisions of this act.

(1) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract shall not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at such election shall include the summary of the retirement system as set forth in the resolution. The election shall be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract shall be by ordinance adopted by the affirmative vote of two-thirds ($\frac{2}{3}$) of the members of the legislative body, not less than twenty (20) days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting thereon.

(2) The contract shall specify that all employees of the contracting employer or such groups of employees as agreed to between the board and the contracting employer shall become members. The groups of employees to be included shall be by departments, duties, age or other similar classifications and not by individual employees. The board shall have the right to disapprove any classification into groups if in its opinion said classification affects adversely the interest of the retirement system. Membership in the retirement system shall be compulsory for all employees included under the contract.

(3) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

History: En. 68-1701 by Sec. 14, Ch. 323, L. 1973.

68-1702. Request by individual employee for employer to participate. Any employee who has continuously been, for a period of at least two (2) years, an employee of a municipal corporation, county or other public agency of this state which is not a contracting employer may advise the legislative body of his employer, in writing, that he wishes to participate

in the retirement system. Within thirty (30) days after receipt of such written request, the legislative body shall thereupon adopt the resolution of intention and take such action as provided for in section 68-1701.

History: En. 68-1702 by Sec. 15, Ch. 323, L. 1973.

68-1703. Conversion of local or state retirement plan. Should the legislative body of any city, county or public agency having an existing retirement, pension or annuity fund or system, hereafter referred to as the local system, desire to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in section 68-1701 provided, however, that the employees voting as provided in subsection (1) of section 68-1701 shall be limited to active members of the local system and approval shall require an affirmative vote of two-thirds (2/3) of such employees.

All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract shall be continued and paid at their existing rates by the public employees' retirement system. The liability for such pensions shall be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system shall be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of said securities shall be determined by the board.

The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members, and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of such members in the public employees' retirement system and administered as if said contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section shall be payable by the contracting employer, with interest, on a monthly basis as specified in the contract.

History: En. 68-1703 by Sec. 16, Ch. 323, L. 1973.

68-1704. Tax levy to meet employer's obligations. If the contributions required to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer shall have authority to budget, levy and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per one hundred dollars (\$100) of assessable property as will be sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be

in addition to the annual rate of taxation allowed by law to be levied by the contracting employer. Any person who is a member or beneficiary of the retirement system on account of the participation of the contracting employer shall have the right to maintain the appropriate action or proceeding to require performance of the duty imposed on the legislative body by this section.

History: En. 68-1704 by Sec. 17, Ch. 323, L. 1973.

CHAPTER 18—BOARD OF ADMINISTRATION

Section

- 68-1801. Location of board—quorum—appointment of committee—election of president.
- 68-1802. Compensation and expenses of board members.
- 68-1803. Rules and regulations—records—annual report by board.
- 68-1804. Employment of actuary—biennial investigation and valuation.

68-1801. Location of board—quorum—appointment of committee—election of president. The board shall maintain its office in the city of Helena. A quorum of the board shall be three (3) members. The board shall elect one of its members president. The board may appoint a committee of one or more of its members, which shall have authority to perform routine acts, such as retirement of members and fixing of retirement allowances, approval of death claims and correction of records necessary in the administration of the system in accordance with the provisions of this act and rules and regulations of the board. The department of administration shall appoint and fix the compensation of the administrator and other necessary employees. The attorney general shall be the legal counsel for the board.

History: En. 68-1801 by Sec. 18, Ch. 323, L. 1973.

68-1802. Compensation and expenses of board members. The travel expenses of members of the board shall be as allowed in 59-538, 59-539, and 59-801, as amended, and reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive, in addition to travel expenses, compensation at the rate of \$25 a day. All expenses of the administration of this act in excess of the amounts provided by the membership fees contributed pursuant to 68-1904 shall be a charge on the appropriation made from the general fund of the state.

History: En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977.

Amendments

The 1977 amendment substituted "travel expenses" in each of the first two sen-

tences for "actual and necessary expenses"; inserted "as allowed in 59-538, 59-539, and 59-801, as amended" in the first sentence; and made minor changes in phraseology, punctuation and style.

68-1803. Rules and regulations—records—annual report by board.
 (1) The board may establish such rules and regulations as it deems proper for the administration and operation of the retirement system and enforcement of this act, subject to its limitation. The board shall determine who are employees within the meaning of this act. The board shall be

the sole authority under this act as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this act. The board shall establish those uniform rules and regulations as are necessary to determine credit for fractional years of service. All persons in similar circumstances shall be treated alike. The board shall maintain such records and accounts it determines necessary for the administration of this act. Upon the basis of the findings of the actuary pursuant to section 68-1804, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this act.

(2) As soon as practical after the close of each fiscal year, the department of administration shall file with the governor a report of its work for that fiscal year. The report shall include a statement as to the accumulated cash and securities in the retirement fund as certified by the state treasurer and the board of investment. The report shall also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of the system.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 9, Ch. 332, L. 1977.

Amendments

The 1977 amendment inserted the sixth sentence of subsection (1); and made a minor change in phraseology.

68-1804. Employment of actuary—biennial investigation and valuation. The board shall retain on a full-time basis, a competent actuary who is a member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary shall be the technical advisor of the board on matters regarding the operation of the system. Biennially he shall make an actuarial investigation into the suitability of the actuarial tables used by the system and an actuarial valuation of the assets and liabilities of the retirement system. From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board.

History: En. 68-1804 by Sec. 21, Ch. 323, L. 1973.

CHAPTER 19—MANAGEMENT OF FUND—EMPLOYER AND EMPLOYEE CONTRIBUTIONS

Section

68-1901. Management of fund.

68-1902. Member's contributions—deduction from pay.

68-1903. Additional contributions allowed.

68-1904. Employer contribution to administrative expense.

68-1905. Refund of contributions on termination of service.

68-1906. Reinstatement after withdrawal of contributions—redeposit of contributions.

68-1907. Transfer of dormant savings account to pension fund.

68-1901. Management of fund. The retirement fund shall be managed as follows:

(1) The board is the trustee of all moneys collected for the retirement system and has exclusive control of the administration of the fund except as otherwise provided by law.

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(3) The department of administration shall deposit in the state treasury all amounts received by it as provided in this act.

(4) The state treasurer is custodian of the retirement fund, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash deposited in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration may:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom;

(b) directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits;

(c) in any manner use the same except to make such current and necessary payments as are authorized by the department; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

(7) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(8) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 99, 286, and 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

Chapter 99, Laws of 1977, deleted "of administration" after "board" in subdivisions (1) and (4); inserted subdivision

designations (6)(a) to (6)(d); and made minor changes in phraseology and punctuation.

Chapter 286, Laws of 1977, deleted "monthly" after "deposit" in subdivision (3).

Chapter 332, Laws of 1977, deleted "of administration" after "board" in subdivisions (1) and (4); inserted "is the trustee of all moneys collected for the retirement system and" in subdivision (1); added "by law" at the end of subdivision (1); inserted subdivision designations (6)(a) to (6)(d); added subdivisions (7) and (8); and made minor changes in phraseology and punctuation.

68-1902. Member's contributions—deduction from pay. The normal contribution of each member shall be equal to six per cent (6%) of his

compensation. The chief administrative officer of each employer shall deduct the contribution from the compensation of each member and remit the total of the contributions to the board. Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

History: En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975.

Amendments

The 1975 amendment increased the normal contribution from 5.75% to 6% of this compensation.

68-1903. Additional contributions allowed. Subject to the rules and regulations promulgated by the board, any member may elect to contribute at rates in excess of those provided for in section 68-1902 for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions.

History: En. 68-1903 by Sec. 24, Ch. 323, L. 1973.

68-1904. Employer contribution to administrative expense. (1) The board may assess and the department of administration shall collect a fee from each employer for the purpose of defraying the administrative expense of this act, not to exceed .3% of gross compensation.

(2) In addition to the contributions elsewhere provided in this act, on July 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of \$1. These fees together with other moneys appropriated for that purpose shall be used for the purpose of defraying the administrative expense of this act.

History: En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977.

The 1977 amendment deleted "of administration" after "board" near the beginning of subsection (1); inserted "from each employer" near the middle of subsection (1); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment inserted subsection (1).

68-1905. Refund of contributions on termination of service. Except as provided in this section, any member whose service has been discontinued by other than death or retirement shall be paid such part of his accumulated contributions, including regular interest thereon, as he requests. If he has less than five (5) years of service and he does not re-enter service for a period of five (5) years after such discontinuance, he shall automatically be paid any portion of his total accumulated contributions not previously withdrawn. Upon qualification for any other benefit under this act, a member having any accumulated normal contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made. The board may, in its discretion, withhold for not more than one

(1) year after a member last rendered service, all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-1906.

History: En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975.

Amendments

The 1975 amendment inserted "including regular interest thereon" in the first sentence; deleted a former second sentence which read: "If he has ten (10) or more years of creditable service, the amount paid shall include regular interest on the accumulated normal contributions"; sub-

stituted "less than five (5) years" for "less than ten (10) years" at the beginning of the present second sentence; and deleted subsection (2) which read: "Should the state service of any member, regardless of years of service, be discontinued other than by death or retirement after July 1, 1974, he shall be paid such part of his accumulated contributions, including regular interest thereon, as he requests."

68-1906. Reinstatement after withdrawal of contributions—redeposit of contributions. Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of his accumulated normal contributions after a termination of previous membership is considered a new member without credit for any previous membership service, and he may reinstate that membership service by redepositing the sum of the accumulated normal contributions which were refunded to him at the last termination of his membership plus the interest which would have been credited to his account had the refund not taken place. If he makes this redeposit, his membership shall be the same as if unbroken by such last termination. Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership shall be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents shall continue unchanged until changed as provided herein.

History: En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975.

Amendments

The 1975 amendment deleted "within

two (2) years of his re-entering the retirement system" after "reinstate that membership service by redepositing" near the middle of the first sentence.

68-1907. Transfer of dormant savings account to pension fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. 68-1907 by Sec. 28, Ch. 323, L. 1973.

CHAPTER 20—SERVICE RETIREMENT ELIGIBILITY AND ALLOWANCES

Section

- 68-2001. Eligibility for service retirement—early retirement.
- 68-2002. Time for commencement of allowance.
- 68-2003. Annual amount of retirement allowance payable.
- 68-2004. Excess allowance to members on July 1, 1973.
- 68-2005. Early retirement allowance.

68-2001. Eligibility for service retirement—early retirement. (1) A member who has attained the age of sixty (60) and completed five (5) years of qualified service is eligible for service retirement. A member who has attained age sixty-five (65) is eligible for service retirement regardless of his years of creditable service. A member who has completed thirty (30) years or more of state service is eligible for service retirement regardless of his age.

(2) A member who is not eligible for service retirement but has attained age fifty-five (55) and completed five (5) years of qualified services is eligible for early retirement.

History: En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975.

Amendments

The 1975 amendment reduced the serv-

ice requirement from ten years to five years in subsections (1) and (2); and substituted "qualified service" for "creditable service" throughout the section.

68-2002. Time for commencement of allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2001 and filed the appropriate written application. The retirement allowance shall commence on the first day of the month following the member's last day of membership service or on the first day of the month in which his application is filed with the board, whichever is later.

History: En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977.

Amendments

The 1977 amendment substituted "the first day of the month following" for "the day following" in the second sentence.

68-2003. Annual amount of retirement allowance payable. (1) The annual amount of retirement allowance payable to a member following his service retirement is the sum of (a), (b) and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) one sixtieth (1/60) of his final compensation multiplied by the number of years of his creditable service;

(c) any retirement allowance payable under section 68-2004.

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 68-2203, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

History: En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977.

Amendments

The 1975 amendment substituted "one sixtieth (1/60)" for "one sixty-fifth (1/65)" in subdivision (2).

Chapter 241, Laws of 1977, designated the former section as subsection (1); redesignated subdivisions (1) through (3) as subdivisions (1)(a) through (1)(c); added subsection (2); and made a minor change in phraseology.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 241 and once by Ch. 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Chapter 332, Laws of 1977, made the same changes as were made by Chapter 241, except for a minor change in phraseology in subsection (2).

68-2004. Excess allowance to members on July 1, 1973. The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2) as follows over 68-2003(1)(b):

(1) the sum of a pension for prior service equal to one sixtieth (1/60) of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age seventy (70) in service, the lesser of four hundred eighty dollars (\$480) or one-half (1/2) of his final compensation.

History: En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977.

sixtieth (1/60)" for "one sixty-fifth (1/65)" in subdivision (1).

The 1977 amendment substituted "68-2003(1)(b)" for "subsection (2) of section 68-2003" in the preliminary phrase.

Amendments

The 1975 amendment substituted "one

68-2005. Early retirement allowance. The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age sixty (60) pursuant to section 68-2003.

History: En. 68-2005 by Sec. 33, Ch. 323, L. 1973.

CHAPTER 21—DISABILITY RETIREMENT ELIGIBILITY AND ALLOWANCE

Section

68-2101. Disability retirement eligibility—definitions—medical examinations—hearings—waiver.

68-2102. Application for disability retirement allowance.

68-2103. Allowance for duty-related disability.

68-2104. Annual allowance for nonduty-related disability—reduction for misconduct.

68-2101. Disability retirement eligibility—definitions—medical examinations—hearings—waiver. (1) A member who is not eligible for service or early retirement but has completed five (5) years of creditable service and has become disabled while in active service, as defined in subsection (2) of this section, is eligible for disability retirement.

(2) "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

(3) The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of

books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and of sections 68-2201 and 68-2202 and shall pay for those medical services and advice compensation the board deems reasonable.

(4) A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement.

History: En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977.

Amendments

The 1975 amendment reduced the creditable service requirement from ten years to five years in subsection (2).

The 1977 amendment deleted former subsection (1) which provided "A member who has not reached seventy (70) years of age but has become disabled for duty related reasons, as defined in subsections (3) and (4) of this section, is eligible for disability retirement"; redesignated former subsections (2) and (3) as subsections (1) and (2); deleted "for other than duty related reasons" after "while in active service" in subsection (1);

deleted former subsection (4) which defined "duty related" as a result of an injury or disease arising out of or in the course of his employment with an employer; deleted former subsection (5) which defined "injury" as a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical conditions as result therefrom, and excluding disease not traceable to injury; redesignated former subsections (6) and (7) as subsections (3) and (4); deleted "and whether a disabled member became disabled for duty-related reasons" from the end of the first sentence of subsection (3); and made minor changes in phraseology.

DECISIONS UNDER FORMER LAW

Incapacity Not Result of Employment

District court improperly reversed decision of board which refused relator's claim for an occupational disability retirement allowance based upon job-related disability caused by adverse working conditions and granted relator ordinary disability retirement allowance since district

court substituted its judgment for that of board and since "disease" as used in former section 68-901, did not include "personality disorders, anxiety reactions, or difficulties in getting along with one's superiors or fellow workers." State ex rel. Bailey v. Grande, 154 M 437, 465 P 2d 334.

68-2102. Application for disability retirement allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2101 and duly filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within four (4) full months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application.

The retirement allowance payable to a member who has become disabled shall commence on the day following the member's last day of membership service.

History: En. 68-2102 by Sec. 35, Ch. 323, L. 1973.

68-2103. Allowance for duty-related disability. (1) The annual amount of retirement allowance payable to a member eligible for disability

retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded compensation by the workers' compensation division, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977.

History: En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 99 and once by Ch. 241. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 99, Laws of 1977, substituted "workers' compensation" for "workmen's compensation"; and made minor changes in phraseology, punctuation and style.

Chapter 241, Laws of 1977, designated the former section as subsection (1); inserted "and granted prior to July 1, 1977" near the beginning of subsection (1); and added subsection (2).

68-2104. Annual allowance for nonduty-related disability—reduction for misconduct. (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (a), (b) and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension which is the greater of (i) or (ii) as follows:

(i) a pension which, together with the annuity provided under (b), shall make the retirement allowance equal to ninety percent (90%) of one-sixtieth of his final compensation multiplied by his years of creditable service;

(ii) a retirement allowance equal to twenty-five percent (25%) of his final compensation.

(2) Except as provided in 68-2301, if a member dies after retirement and has not elected an optional retirement allowance provided for in 68-2203, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.

History: En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977.

the code commissioner has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 241 and once by Ch. 332. Since the amendments do not appear to conflict,

Amendments

Chapter 241, Laws of 1977, substituted "greater" for "lesser" near the end of the introductory phrase of subdivision (3);

substituted "one-sixtieth" for "one-sixty-fifth (1/65)" in subdivision (3)(a); and substituted "retirement allowance" for "pension" in subdivision (3)(b).

Chapter 332, Laws of 1977, designated the former section as subsection (1); redesignated former subdivisions (1) to (3) as subdivisions (1)(a) to (1)(c); substituted "greater" for "lesser" near the

end of the introductory phrase of subdivisions (1)(c); redesignated former subdivisions (3)(a) and (3)(b) as subdivisions (1)(c)(i) and (1)(c)(ii); substituted "one-sixtieth" in subdivision (1)(c)(i) for "one-sixty-fifth (1/65)"; substituted "retirement allowance" for "pension" in subdivision (1)(c)(ii); and added subsection (2).

CHAPTER 22—REDUCTION OR CANCELLATION OF ALLOWANCE

Section

- 68-2201. Medical examination of disability retiree—cancellation and reinstatement.
- 68-2202. Disability allowance reduced by earnings.
- 68-2203. Optional retirement allowance.
- 68-2204. Cancellation of retirement allowance upon re-employment.

68-2201. Medical examination of disability retiree—cancellation and reinstatement. (1) The board may, at its pleasure, require the recipient of a retirement allowance because of disability to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he was retired or the duties proposed to be assigned to him. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to medical examination, his retirement allowance shall be canceled.

(2) A person whose retirement allowance is canceled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity, if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which he may have or claim to have.

(3) If a person whose retirement allowance is canceled is not reemployed in a position subject to the retirement system, his service is considered, for the purposes of 68-1905, to have been discontinued coincident with the commencement of his retirement allowance.

History: En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977.

Amendments

The 1977 amendment substituted "may"

for "shall" in the last sentence of subsection (2); inserted "the commencement of" near the end of subsection (3); and made minor changes in phraseology, punctuation and style.

68-2202. Disability allowance reduced by earnings. Should the recipient of a retirement allowance because of disability engage in a gainful occupation during any month other than as an employee as defined in section 68-1503, the amount of his retirement allowance for that month shall be reduced to an amount which, when added to the compensation earned

by him in that occupation, shall not exceed the amount of his monthly compensation at the time of his retirement.

History: En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974.

Amendments

The 1974 amendment substituted "retirement allowance" for "pension" before "for that month."

68-2203. Optional retirement allowance. (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of the regular retirement allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) option 1—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(b) option 2—a continuation of one-half of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(c) option 3—such other actuarially equivalent benefit as may be approved by the board.

(2) Election of an optional retirement allowance must be by written application filed prior to the first payment of the regular retirement allowance.

(3) If either the member or his contingent annuitant dies before the member has received the first payment under option 1 or 2, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date his election or changed election of an optional retirement allowance is received by the board, then the election is void and the death is considered as that of a member before retirement.

History: En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 99, 241, and 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1974 amendment deleted former subdivision (1)(d), Option 4, which read "an actuarial equivalent benefit based on the life of a single designated beneficiary"; and redesignated former subdivision (1)(e), Option 5, as subdivision (1)(d), Option 4.

Chapter 99, Laws of 1977, substituted "the regular retirement allowance" at the

end of the first sentence of subsection (1) for "such other allowance"; deleted the second sentence of subsection (2) which read: "The contingent annuitant named by the member must have an insurable interest in the life of the member"; and made minor changes in phraseology, punctuation and style.

Chapter 241, Laws of 1977, deleted subdivision (1)(a) which read: "Option 1—a death benefit to the member's beneficiary equal to the excess, if any, of the member's accumulated contributions with regular interest to the day his retirement allowance commenced over the total of his retirement allowance payments"; and redesignated subdivisions (1)(b) through (1)(d) as subdivisions (1)(a) through (1)(c).

Chapter 332, Laws of 1977, made the same changes as were made by Chapters 99 and 241; and renumbered the remaining options 2 through 4 in subdivisions (1)(a) to (1)(c) as options 1 through 3.

68-2204. Cancellation of retirement allowance upon re-employment.

(1) Any person receiving a retirement allowance who becomes an em-

ployee shall be considered reinstated from retirement and his retirement allowance shall be canceled. Upon subsequent retirement he shall be entitled to receive a recalculated benefit as provided in section 68-2003. Such recalculated benefit shall be based on his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment. Except as otherwise expressly provided by law, he shall receive the benefit of provisions enacted subsequent to his initial retirement only if he accrues at least two (2) years of creditable service subsequent to his reinstatement and then only with respect to such creditable service.

(2) Any person receiving a service retirement allowance not as a beneficiary who is not eligible for membership may return to covered employment for a period not to exceed sixty (60) working days in any fiscal year. The retirement allowance of a retiree so employed will be reduced by any earnings in excess of the minimum wage per month on one dollar (\$1) for one dollar (\$1) basis.

History: En. 68-2204 by Sec. 41, Ch. 323,
L. 1973; amd. Sec. 6, Ch. 190, L. 1974.

Amendments

The 1974 amendment added subsection (2).

CHAPTER 23—DEATH BENEFITS

Section

- 68-2301. Death benefits—eligibility.
- 68-2302. Amount of death benefit.
- 68-2303. Election of optional death benefit by beneficiary.
- 68-2304. Survivorship allowance elected by beneficiary.
- 68-2305. Amount of survivorship allowance.

68-2301. Death benefits—eligibility. The board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following statuses:

- (1) while in service;
- (2) within four (4) months after the discontinuance of service but before retirement;
- (3) while a recipient of a retirement allowance because of disability, if such allowance has been in effect less than four (4) months;
- (4) while disabled, as defined in section 68-2101, if he has been continuously so disabled from the discontinuance of his service but he is not receiving a retirement allowance because of the disability.

History: En. 68-2301 by Sec. 42, Ch. 323, L. 1973.

68-2302. Amount of death benefit. The amount of death benefit is the sum of (1) and (2), as follows:

- (1) the member's accumulated contributions, together with regular interest on the accumulated normal contributions to the date of the member's death;
- (2) an amount equal to one-twelfth (1/12) of the compensation received by the member during the last twelve (12) months of such compensation multiplied by the smaller of six (6) or the number of years of his creditable service; provided, however, that this portion of the

death benefit is not payable if the board receives a certification from the workmen's compensation division of the state of Montana that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment.

History: En. 68-2302 by Sec. 43, Ch. 323, L. 1973.

68-2303. Election of optional death benefit by beneficiary. A member or his beneficiary after his death may elect to have the death benefit paid in an actuarially equivalent form subject to such rules and regulations as the board may adopt. Election of an optional death benefit shall be by written application.

History: En. 68-2303 by Sec. 44, Ch. 323, L. 1973.

68-2304. Survivorship allowance elected by beneficiary. A beneficiary eligible to receive a death benefit may elect, by written application, a survivorship allowance instead if all of the following conditions are met:

(1) The member on behalf of whom the death benefit is payable had completed 5 years of creditable service.

(2) The beneficiary is a natural person of legal age.

(3) The beneficiary elects the survivorship allowance within 90 days of receipt of notice from the board that he is eligible to receive the death benefit.

History: En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977.

Chapter 89, Laws of 1977, substituted "5 years" for "ten (10) years" in subdivision (1).

Chapter 99, Laws of 1977, inserted "by written application" in the introductory phrase; deleted "with an insurable interest in the deceased at the time of his death" at the end of subdivision (2); deleted "Election shall be by written application" at the end of subdivision (3); and made minor changes in punctuation and style.

Chapter 241, Laws of 1977, substituted "5 years" for "ten (10) years" in subdivision (1).

Compiler's Notes

This section was amended three times in 1977 by Chs. 89, 99, and 241. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1974 amendment substituted "had completed ten (10) years of creditable service" in subdivision (1) for "was eligible for service retirement or early retirement."

Effective Date

Section 4 of Ch. 89, Laws 1977 provided the act should be effective upon its passage and approval. Approved March 25, 1977.

68-2305. Amount of survivorship allowance. The annual amount of survivorship allowance payable to a member's beneficiary shall be the actuarial equivalent of either:

(1) the accrued portion of the service retirement allowance which would have been payable to the member commencing at age sixty (60) pursuant to section 68-2003, if he had not attained age sixty (60) at the time of his death; or

(2) if the deceased member had attained age sixty (60) or completed thirty (30) years of service at the time of his death, the service retirement

allowance which would have been payable to the member if he had retired immediately prior to his death,

History: En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974.

Amendments

The 1974 amendment substituted "actuarial equivalent of either" in the first sentence for "the same as the optional retire-

ment allowance would have been if the member had retired immediately prior to his death after having elected an option 4 retirement allowance with the beneficiary as the contingent annuitant"; and added subdivisions (2) and (3).

CHAPTER 24—BENEFICIARIES

Section

68-2401. Designation of beneficiary—effect of no designation.

68-2402. Minor beneficiaries—small amounts paid to custodian.

68-2401. Designation of beneficiary—effect of no designation. (1)

The beneficiary of a member shall be such person as the member shall so designate in the appropriate written application. A member may revoke such designation and name a different beneficiary by filing a revised written instrument with the board. If no living beneficiary is designated, the estate of the member shall be the beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement allowances accrued but not received prior to death, shall be paid directly without probate to the surviving next of kin of the deceased, or the guardians of said survivor's estate, share and share alike, payment to be made in the same order in which the following groups are listed:

- (a) husband or wife, or
- (b) children, or
- (c) father and mother, or
- (d) grandchildren, or
- (e) brothers and sisters, or
- (f) nieces and nephews.

(2) No payment shall be made to persons included in any of said groups if at the date of payment there be living persons in any of the groups preceding it, as listed. Payment shall be made upon receipt from said persons of an affidavit, upon a form supplied by the retirement board, that there are no living individuals in the groups preceding it and that the estate of the deceased will not be probated. The payment shall be in full and complete discharge and acquittance of the board and system on account of said death.

(3) If a member's beneficiary cannot be found within ninety (90) days of the member's death or if the estate of the member is his beneficiary, the board in its discretion may pay all or a portion of the death benefit to the undertaker who conducted the funeral of the member or to any person or organization who paid the undertaker; provided, however, the amount so paid by the board shall not exceed the funeral expenses or the portion of such expenses paid by the person or organization respectively, all as evidenced by the sworn itemized statement of the undertaker and by other documents the board may require. The payment shall be in full and complete discharge and acquittance of the board and

system up to the amount so paid, anything in this act to the contrary notwithstanding.

History: En. 68-2401 by Sec. 47, Ch. 323, L. 1973.

68-2402. Minor beneficiaries—small amounts paid to custodian. If any benefit from the system not to exceed five hundred dollars (\$500) is payable to a minor who has no guardian of his estate, the benefit may be paid to the person entitled to the custody of a minor to hold for the minor upon execution and filing with the board of a written statement by such person that the total estate of the minor does not exceed one thousand dollars (\$1,000) in value. The payment shall be in full and complete discharge and acquittance of the board and system on account of said benefit. The person shall account to the minor for the money when the minor reaches the age of majority.

History: En. 68-2402 by Sec. 48, Ch. 323, L. 1973.

CHAPTER 25—ADMINISTRATION OF CONTRIBUTIONS AND ALLOWANCES

Section

- 68-2501. Monthly payments—combining installments.
- 68-2502. Allowances exempt from execution, taxes, creditor process.
- 68-2502.1. Withholding of group insurance premium from retirement benefit.
- 68-2503. Estimate of allowance when information incomplete.
- 68-2504. Employer contribution rates—actuarial determination.
- 68-2505. Payment of state contributions—budget and appropriations.
- 68-2506. Transfers between funds.
- 68-2507. Payment of contributions by contracting employer.
- 68-2508. Budget act superseded.
- 68-2509. Adjustment of errors in payments.
- 68-2510. Federally subsidized employees eligible—national guardsmen.
- 68-2511. Transfer to and from and concurrent membership in teachers' retirement system.
- 68-2512. Reports by employers on status of employees.
- 68-2513. Cost-of-living increases.
- 68-2513.1. Cost-of-living increase.
- 68-2514. Retention of previously conferred benefits.

68-2501. Monthly payments—combining installments. (1) A retirement allowance or survivorship allowance granted under the provisions of this act shall be payable in monthly installments, except that the board at its discretion may convert payments of less than \$20 per month to larger periodic payments which are the actuarial equivalent of such smaller payments, but which occur less frequently. If payments of at least \$20 per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance ends before the last day of the month.

(2) There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one period of service of the member.

History: En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977.

Amendments

The 1977 amendment designated the for-

mer section as subsection (1); deleted "begins after the first day of the month or" after "retirement allowance" in the last sentence of subsection (1); added subsection (2); and made minor changes in style.

68-2502. Allowances exempt from execution, taxes, creditor process.

The right of a person to a retirement allowance or any other benefit under this act and the moneys in the fund created under this act shall not be subject to execution, garnishment, attachment, state or municipal taxes, or any other process whatsoever, and shall be unassignable except as in this act specifically provided.

History: En. 68-2502 by Sec. 50, Ch. 323, L. 1973.

68-2502.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977.

68-2503. Estimate of allowance when information incomplete. If it shall be impracticable for the board to determine from the records the length of service, the compensation or the age of any members, or if any member refuses or fails to give the board a statement of his state service, his compensation or his age, the said board may estimate, for the purposes of this act, such length of service, compensation or age.

History: En. 68-2503 by Sec. 51, Ch. 323, L. 1973.

68-2504. Employer contribution rates—actuarial determination. (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates shall be four and six-tenths per cent (4.6%) from July 1, 1973, to June 30, 1975, and four and nine-tenths per cent (4.9%) from July 1, 1975, to June 30, 1976, and five and one-quarter per cent (5.25%) from July 1, 1976, to June 30, 1977 and five and sixty-five hundredths per cent (5.65%) from July 1, 1977 to June 30, 1978 and five and ninety hundredths per cent (5.90%) from July 1, 1978, and thereafter.

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the forty (40) year period following the date of the determination which is equal to the unfunded liability

on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons.

History: En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975.

Amendments

The 1975 amendment specified the percentage rates in subsection (1) for computing the employers' contribution subsequent to July 1, 1975.

68-2505. Payment of state contributions—budget and appropriations.

(1) No later than the 10th day of each month, each department, board, commission, bureau, or other agency of the state shall certify to the state auditor all contributions required of the unit and its employees under this act on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for the contributions. The warrant shall be drawn to the credit of the retirement fund on the funds appropriated to the unit.

(2) Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this act for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this act.

History: En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977.

respective departments" after "its employees" near the middle of subsection (2); and made minor changes in phraseology and style.

Amendments

The 1977 amendment deleted "in their

68-2506. Transfers between funds. Any fund out of which payments are made under the provisions of this act may be reimbursed to the extent of such payments by transfer of a sufficient sum for the reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the state auditor the amounts to be thus transferred and the funds from and to which the transfer is to be made, and the auditor shall thereupon make the transfer as directed in the certificate.

History: En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

68-2507. Payment of contributions by contracting employer. Between the first and twentieth day of each month, each contracting employer shall remit to the public employees' retirement system all contributions required of the employer and its employees under this act on the basis of compensation paid during the previous month. These remittances shall be accompanied by such reports as are required by rules of the board.

History: En. 68-2507 by Sec. 55, Ch. 323, L. 1973.

68-2508. Budget act superseded. This act shall be valid and effective despite any provisions in the state budget act to the contrary.

History: En. 68-2508 by Sec. 56, Ch. 323, L. 1973.

68-2509. Adjustment of errors in payments. If more or less than the correct amount of contribution required by this act of a member, the state or a contracting employer is or has been paid, proper adjustment shall be made in connection with the subsequent payments, or such adjustments may be made by direct cash payments between the member, state or contracting employer in connection with whom the error was made, and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

History: En. 68-2509 by Sec. 57, Ch. 323, L. 1973.

68-2510. Federally subsidized employees eligible—national guardsmen.

(1) A person whose compensation is paid either fully or in part from federal funds, but who is not subject to the federal retirement system, is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(2) Each member of the Montana army and air national guard is considered an employee. Any such person may, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of 68-1607 and 68-1608.

History: En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977.

Amendments

The 1977 amendment deleted "who was an employee on July 1, 1961, or prior thereto and who has filed with the board an election not to become a member" after

"Any such person" at the beginning of the second sentence of subsection (2); deleted "at any time" after "may" in the second sentence of subsection (2); inserted "68-1607 and" before "68-1608" at the end of subsection (2); and made a minor change in style.

68-2511. Transfer to and from and concurrent membership in teachers' retirement system. (1) For the purpose of this section, "system" means the public employees' retirement system of Montana or the teachers' retirement system of the state of Montana.

(2) Upon transfer of a person from being an employee under one system to being an employee in the other, all service credits, both prior and membership, shall be transferred, except those that have been forfeited by withdrawal and have not been reinstated. The amounts transferred shall be determined by the boards of the systems by mutual agreement and shall be certified by the system from which the employee transfers.

(3) Any person who is concurrently employed by employers under both systems is entitled to establish credits or equities in each of the systems in accordance with and to the extent set forth in this act.

(4) Eligibility of any such person for a retirement allowance, death benefit, or refund of contributions is governed by the provisions of the act creating the system to which the person last made contributions and is

based upon the entire length of service for which he has been granted credit under both systems.

History: En. 68-2511 by Sec. 59, Ch. 323, L. 1973; amd. Sec. 13, Ch. 99, L. 1977.

Amendments

The 1977 amendment rewrote the first sentence of subsection (2) which read: "Upon transfer of a person from being an employee under one system to being an employee in the other, there shall be trans-

ferred service credits, both prior and membership, as have not been forfeited by withdrawal, unless the forfeited credits shall have been reinstated as provided by law"; divided former subsection (2) into subsections (2) and (3); redesignated former subsection (3) as subsection (4); and made minor changes in phraseology.

68-2512. Reports by employers on status of employees. The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The chief administrative officer shall furnish such additional information concerning the members as the board may require in the administration of the retirement system, including such services of the employer's office and departments as the board may request in connection with claims by members for benefits under the system.

History: En. 68-2512 by Sec. 60, Ch. 323, L. 1973.

68-2513. Cost-of-living increases. (1) Effective July 1, 1975, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by one dollar (\$1) per month for each year of creditable service at the time of retirement and two dollars (\$2) per month for each full calendar year he has been retired.

(2) Effective July 1, 1975 every survivorship annuity then payable to a member's beneficiary shall be increased by one dollar (\$1) per month for each year of creditable service of the deceased member and two dollars (\$2) per month for each full calendar year since the deceased member retired.

History: En. 68-2513 by Sec. 61, Ch. 323, L. 1973; amd. Sec. 13, Ch. 128, L. 1975.

Amendments

The 1975 amendment deleted former subsection (1), which read, "Index' for purposes of this section shall mean, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 = 100) compiled by the bureau of labor statistics, United States department of labor, or successor agency"; redesignated subsections (2) and (3) as (1) and (2); substituted 1975 for 1973 in subsections (1) and (2); substituted the

automatic monthly increase in subsection (1) for "increased by a percentage equal to the lesser of one-half ($\frac{1}{2}$) of the percentage increase in the index for 1972 from the index for 1970 or the index for 1972 from the index for the calendar year preceding the effective date of retirement of the member"; substituted the automatic monthly increase in subsection (2) for "increased by a percentage equal to the lesser of one-half ($\frac{1}{2}$) of the percentage increase in the index for 1972 from the index for the calendar year 1970 or for the index for 1972 from the index for the calendar year preceding the date of death of the deceased member."

68-2513.1. Cost-of-living increase. (1) "Index" for the purpose of this section means, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items

(1957-59=100) compiled by the bureau of labor statistics, United States department of labor or a successor agency.

(2) Effective July 1, 1977, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of 75% of the percentage increase in the index for 1976 from the index for 1974 or the index 1976 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1977, every survivorship allowance then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of 75% of the percentage increase in the index for 1976 from the index for the calendar year 1974 or for the index for 1976 from the index for the calendar year preceding the date of death of the deceased member.

History: En. 68-2513.1 by Sec. 1, Ch. 241, L. 1977.

Title of Act

An act to provide a cost-of-living in-

crease and to change certain allowance provisions in the public employees' retirement system; amending sections 68-2003, 68-2101, 68-2103, 68-2104, 68-2203, and 68-2304, R.C.M. 1947.

68-2514. Retention of previously conferred benefits. All benefits conferred upon members of the public employees' retirement system prior to the effective date of this act shall be retained for all person[s] who are members of the system on the effective date of this act.

History: En. 68-2514 by Sec. 62, Ch. 323, L. 1973.

Compiler's Notes

The compiler has inserted the bracketed letter "s."

Repealing Clause

Section 63 of Ch. 323, Laws 1973 read

"Sections 68-101, 68-102, 68-201, 68-202, 68-203, 68-301, 68-302, 68-303, 68-401 through 68-405, 68-501, 68-601, 68-602, 68-603, 68-701 through 68-710, 68-801, 68-802, 68-901, 68-902, 68-1001 through 68-1005, 68-1101, 68-1201 and 68-1301 through 68-1320, R. C. M. 1947, are repealed."

CHAPTER 26—SHERIFFS' RETIREMENT SYSTEM

Section

- 68-2601. A sheriffs' retirement system is established.
- 68-2602. Definitions.
- 68-2603. A sheriff's retirement board is created.
- 68-2604. Functions of the board—protection of funds.
- 68-2605. Sheriff's retirement account created—investment of funds—transfer of funds.
- 68-2606. Moneys paid to board and credited to retirement system account—accumulated deductions by sheriffs for prior service—contributions—investment earnings—any supplemental appropriations or revenues.
- 68-2607. Membership.
- 68-2608. Members' contributions—deduction from pay.
- 68-2609. Counties contributions—administrative expense paid by the state of Montana.
- 68-2610. Eligibility and application for service retirement.
- 68-2611. Early retirement option.
- 68-2612. Service retirement allowance.
- 68-2613. Disability retirement allowance—disability determined by the board.
- 68-2614. Involuntary retirement allowance.
- 68-2615. Voluntary resignation—discharged for incompetence, unlawful conduct—notification of the board—payment of accumulated deductions.
- 68-2616. Reinstatement after withdrawal of contributions.
- 68-2617. Payments in case of death after retirement.
- 68-2618. Payments in case of death before retirement.
- 68-2619. Payments to be monthly and fixed.
- 68-2620. Retirement annuities exempt from state or municipal tax, sale, garnishment, attachment, or other process and shall be unassignable.

- 68-2620.1. Withholding of group insurance premium from retirement benefit.
- 68-2621. Designation of beneficiary.
- 68-2622. Military service.
- 68-2622.1. Qualification of nonsheriff service in the public employees' retirement system.
- 68-2623. False statements or falsification of records illegal—penalties.
- 68-2624. Board may revoke, refuse, or suspend member's annuity for conviction of felony—injury or death due to wrongful conduct.
- 68-2625. Payments are in addition to those provided by Workmen's Compensation Act.
- 68-2626. Optional retirement allowance.
- 68-2627. Transfer of dormant accumulated deductions.
- 68-2628. Ineligibility for membership in public employees' retirement system.
- 68-2629. Severability clause.

68-2601. A sheriffs' retirement system is established. A retirement system is established for Montana sheriffs which shall be known as the "sheriffs' retirement system." It will be an actuarial reserve system for the payment of death, disability and retirement benefits to sheriffs and to the beneficiaries of the sheriffs to provide for themselves and their dependents in the case of disability or death, and upon retirement from active duty.

History: En. 68-2601 by Sec. 1, Ch. 178,
L. 1974.

Title of Act

An act to establish a sheriffs' retirement system.

68-2602. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

- (1) "Accumulated contributions"—or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system, standing to the member's credit in the account, together with the accrued interest.
- (2) "Beneficiary"—means a person who is nominated in an acknowledged document by the member, which is filed with the board.
- (3) "Retired sheriff"—means a person receiving a retirement allowance under this act.
- (4) "Board"—means the sheriffs' retirement board.
- (5) "Member"—means any person who has accumulated deductions in the account to his credit.
- (6) "Final salary"—means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.
- (7) "Actuarial equivalent"—means a benefit computed using the mortality tables and interest rates adopted by the board, compounded annually.

(8) "Account"—means the Montana sheriffs' retirement account administered by the sheriffs' retirement board.

(9) "Vested retirement"—means a retirement not for cause and before retirement age.

(10) "Member's annuity"—means payments for life derived from contributions made by the contributor while employed.

(11) "Retirement allowance"—means the state annuity plus the member's annuity.

(12) "State annuity"—means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(13) "Creditable service"—means the aggregate of all of a member's current and prior service.

(14) "Membership service"—means service for which an amount is deducted from the salary of a member and paid into the account.

(15) "Prior service"—means service for which credit was granted by the public employees' retirement system of the state of Montana.

(16) "Service"—means employment as a sheriff.

(17) "Sheriff"—means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

History: En. 68-2602 by Sec. 2, Ch. 178, L. 1974; amd. Sec. 1, Ch. 59, L. 1977; amd. Sec. 17, Ch. 332, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 59 and once by Ch. 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 59, Laws of 1977, deleted former subdivision (1) which read "Accumulated deductions"—the total amount deducted from the salary of a member either during a period of membership service or as transferred from the public employees' retirement system with respect to a period of prior service and standing to his credit in the account together with the accrued interest"; redesignated former subdivi-

sions (2) through (14) as subdivisions (1) through (13); inserted "or 'accumulated deductions'" at the beginning of subdivision (1); deleted "having an insurable interest in the member's life" after "a person" in subdivision (2); deleted former subdivision (15) which read "Service credits"—the credit a member employed on a part-time basis shall receive which is a year of service for each fiscal year during which the member was employed the whole year and was engaged in his duties the full amount of time he was required by employment"; redesignated former subdivisions (16) through (19) as subdivisions (14) through (17); and made minor changes in phraseology, punctuation and style.

Chapter 332, Laws of 1977, made the same changes made by Chapter 59, and added the last two sentences to subdivision (6).

68-2603. A sheriff's retirement board is created. The board shall consist of five (5) persons who shall be the same persons that comprise the public employees' retirement board.

History: En. 68-2603 by Sec. 3, Ch. 178, L. 1974.

68-2604. Functions of the board—protection of funds. (1) The board is the trustee of all moneys collected for the retirement system and is charged with the proper administration, operation, and enforcement of this act. It may establish such rules as it considers necessary. The board shall prescribe the conditions under which persons may become members of

and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike. It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and the beneficiaries of the account and shall adopt one or more mortality tables.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 68-2604 by Sec. 4, Ch. 178, L. 1974; amd. Sec. 2, Ch. 59, L. 1977; amd. Sec. 18, Ch. 332, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 59 and once by Ch. 332. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 59, Laws of 1977, deleted "and

regulations" after "rules" near the beginning of the section; and made minor changes in phraseology, punctuation and style.

Chapter 332, Laws of 1977, inserted the subsection (1) designation; inserted "is the trustee of all moneys collected for the retirement system" in subsection (1); inserted the fourth sentence of subsection (1) relating to persons in similar circumstances; added subsections (2) and (3); and made minor changes in phraseology, punctuation and style.

68-2605. Sheriff's retirement account created—investment of funds—transfer of funds. (1) A sheriffs' retirement account is created within the public employees' retirement system. All moneys received under this act shall be credited to this account. The state treasurer shall be the custodian of the account and will respond to the exclusive administrative control of the board. Whenever there is over twenty-five thousand dollars (\$25,000), on deposit in the account that amount will be invested by the board of investments as part of the long-term investment fund and any of the account in an amount of twenty-five thousand dollars (\$25,000) or less shall be invested by the board of investments as part of the short term investment fund when so directed by the sheriffs' retirement board.

(2) The board shall, upon passage of this act, ascertain the amount appropriated to the account hereby created and the state treasurer shall transfer that amount to the account. The state examiner shall audit this transfer of funds.

History: En. 68-2605 by Sec. 5, Ch. 178, L. 1974.

68-2606. Moneys paid to board and credited to retirement system account—accumulated deductions by sheriffs for prior service—contributions—investment earnings—any supplemental appropriations or revenues. The following moneys shall be paid to the board, who shall credit such payments to the sheriffs' retirement system account:

(1) all accumulated deductions paid into the public employees' retirement system by any sheriff, during any period of prior service, as defined in this act; plus

(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city;

(3) all contributions by the various counties as required by this act;

(4) all contributions by sheriffs as defined in this act;

(5) all interest on and increase of the investments and moneys under this act;

(6) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems.

History: En. 68-2606 by Sec. 6, Ch. 178,
L. 1974.

68-2607. Membership. Every sheriff is required to become a member of the sheriffs' retirement system on July 1, 1974, unless he was previously a member of the public employees' retirement system, in which case, he may at his option become a member of the sheriffs' retirement system. Contributions by members under this act shall commence with the first payroll after July 1, 1974. All sheriffs who become members of the sheriffs' retirement system must remain members so long as actively employed in such capacity.

History: En. 68-2607 by Sec. 7, Ch. 178,
L. 1974; amd. Sec. 3, Ch. 59, L. 1977.

Amendments

The 1977 amendment inserted "sheriffs'" before "retirement system" throughout the section; and made minor changes in phraseology.

68-2608. Members' contributions—deduction from pay. Every member shall be required to contribute into the account seven per cent (7%) of his monthly salary which shall be deducted from his salary and deposited to his credit in the account. The contributor's retirement allowance shall be increased for any member who contributes after twenty-five (25) years of service, by an annuity calculated as twice the actuarial equivalent of the portion of the member's accumulated deductions arising from contributions after the completion of twenty-five (25) years of service.

History: En. 68-2608 by Sec. 8, Ch. 178,
L. 1974.

68-2609. Counties contributions—administrative expense paid by the state of Montana. The various counties of Montana shall pay monthly seven and fifty-five one hundredths per cent (7.55%) of each sheriff's gross salary into the retirement account created by this act. The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana.

History: En. 68-2609 by Sec. 9, Ch. 178,
L. 1974.

68-2610. Eligibility and application for service retirement. (1) A sheriff in service who has completed at least 25 years of service and who

has reached the age of 55 years may retire on a service retirement allowance upon written application to the board, submitted not less than 30 days or more than 90 days from the desired date of retirement. The application must state the date he desires to be retired.

(2) Retirement is compulsory for any nonelected sheriff at age 65, except in the case of undersheriffs.

History: En. 68-2610 by Sec. 10, Ch. 178, L. 1974; amd. Sec. 4, Ch. 59, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; and made minor changes in phraseology and punctuation.

68-2611. Early retirement option. If a contributor has served twenty (20) years of creditable service as a sheriff and has reached the age of fifty-five (55) years, he is granted the option and privilege of retiring and, in such case, his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed twenty-five (25) years of creditable service, had he not retired.

History: En. 68-2611 by Sec. 11, Ch. 178, L. 1974.

68-2612. Service retirement allowance. The amount of any member's service retirement allowance shall be two per cent (2%) of his final salary for each year of creditable service up to a maximum of fifty per cent (50%) of final salary.

History: En. 68-2612 by Sec. 12, Ch. 178, L. 1974.

68-2613. Disability retirement allowance—disability determined by the board. In the case of the permanent total disability of the member, regardless of the member's length of service, a disability retirement allowance shall be awarded to the member based on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; but if such total permanent disability is a direct result of member's service as a sheriff in the line of duty then the member shall be awarded an allowance of one-half ($\frac{1}{2}$) of his final salary. Total disability means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice.

History: En. 68-2613 by Sec. 13, Ch. 178, L. 1974.

68-2614. Involuntary retirement allowance. If a member is involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing an application, be paid in one of the following ways:

(1) the full amount of his accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity.

History: En. 68-2614 by Sec. 14, Ch. 178, L. 1974; amd. Sec. 5, Ch. 59, L. 1977.

Amendments

The 1977 amendment substituted "an annuity which is the actuarial equivalent of the present value of the state annuity"

for "the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit" in subsection (2); and made minor changes in phraseology, punctuation and style.

68-2615. Voluntary resignation—discharged for incompetence, unlawful conduct—notification of the board—payment of accumulated deductions.

(1) When a member resigns of his own volition or is discharged for cause other than incompetence, malfeasance in office or unlawful conduct before becoming entitled to the retirement allowance, he must:

(a) notify the board of his termination of eligibility and withdraw accumulated contributions standing to his credit at the time of his termination of eligibility, or

(b) notify the board of his termination of current eligibility but request that accumulated contributions standing to his credit be retained by the board for a period of time not to exceed one (1) year pending re-establishment of eligibility.

(2) A member discharged for incompetence, malfeasance in office or unlawful conduct prior to becoming entitled to a retirement allowance shall notify the board of the termination of eligibility. The member shall be paid the accumulated contributions standing to the member's credit at the time of termination of eligibility.

History: En. 68-2615 by Sec. 15, Ch. 178, L. 1974.

68-2616. Reinstatement after withdrawal of contributions. (1) A member may deposit in the retirement fund, in one sum or in no more than 12 monthly or 24 semimonthly payments, an amount equal to that which was withdrawn at the last termination of membership plus an amount equal to the interest which would have been credited to the account had the member not withdrawn the contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board.

(2) If a member who is reentering the retirement system after a termination of membership does not elect to make or does not make the redeposit, he must reenter as a new member without credit for any service except the prior service credited before the termination. If a member does make the redeposit, his membership is continuous and unbroken by the last termination.

(3) Regardless of whether the redeposit is made, the documents held by the retirement system, as executed by the member prior to termination of membership, shall be held by the system for the same purposes as prior to the termination, and beneficiaries nominated shall remain unchanged.

History: En. 68-2616 by Sec. 16, Ch. 178, L. 1974; amd. Sec. 6, Ch. 59, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; and made minor changes in phraseology, punctuation and style.

68-2617. Payments in case of death after retirement. If a member dies before receiving in payments the amount of the accumulated deductions standing to the sheriff's credit at the time of retirement, the balance shall be paid to the beneficiary.

History: En. 68-2617 by Sec. 17, Ch. 178, L. 1974.

68-2618. Payments in case of death before retirement. (1) If a member dies before retirement, his beneficiary is entitled to elect among those of the following options for which the member qualified and the beneficiary qualifies:

(a) a lump-sum payment of the accumulated deductions standing to the member's credit at his death;

(b) if the member was not eligible to retire at the time of death, a retirement allowance commencing on the member's death which is the actuarial equivalent of a retirement allowance in the amount of 2% of the final salary for each year of service up to a maximum of 25 years;

(c) if the member was eligible to retire at the time of death, a retirement allowance commencing on the member's death in the amount of 2% of the final salary for each year of service up to a maximum of 25 years;

(d) if the board finds that the member died as a direct and proximate result of injuries received in the course of employment and the beneficiary is other than the surviving spouse or minor children, a retirement allowance commencing on the member's death in the amount of 50% of the final salary, less the amount paid to the beneficiary under the Workers' Compensation Act of the state of Montana, during the period such compensation is paid or payable;

(e) if the board finds that the member died as a direct and proximate result of injuries received in the course of employment and the beneficiary is the surviving spouse or minor children, whichever of the following that the beneficiary or the beneficiary's guardian elects:

(i) the retirement allowance provided for in subsection (1)(d); or

(ii) a retirement allowance to be paid to the guardian of the surviving minor children commencing on the member's death and consisting of \$100 per month per surviving minor child of the deceased member, up to a maximum of \$300 per month.

(2) Under the circumstances described in subsection (1)(d), the surviving spouse or, if there is no surviving spouse, the surviving minor children are entitled to the benefit provided for in subsection (1)(e)(ii).

(3) A beneficiary may not be paid for a period longer than the time it would have taken the deceased member to reach the age of 65 years or more than 15 years, whichever is greater.

History: En. 68-2618 by Sec. 18, Ch. 178, L. 1974; amd. Sec. 7, Ch. 59, L. 1977; amd. Sec. 1, Ch. 93, L. 1977.

ite section embodying the changes made by both amendments.

Amendments

Compiler's Notes

This section was amended twice in 1977, once by Ch. 59 and once by Ch. 93. Since the amendments do not appear to conflict, the code commissioner has made a compos-

Chapter 59, Laws of 1977, divided the section into subsections; redesignated former subdivisions (1) through (3) as subdivisions (1)(a) through (1)(c); redesignated former subdivision (4) as sub-

division (1)(d) and subsection (2) (now subsection (3)); substituted "retirement allowance in the amount of" for "retirement in the amount of" in subdivision (1)(b); substituted "Workers' Compensation Act" near the end of subdivision (1)(d) for "Workmen's Compensation Act"; and made minor changes in phraseology, punctuation and style.

Chapter 93, Laws of 1977, designated the former section as subsection (1); re-designated former subdivisions (1) through (4) as subdivisions (1)(a) through (1)(d); inserted "and the beneficiary" near the end of the introductory portion in subsection (1); inserted "and the beneficiary is other than the surviving spouse or minor children" in subdivision (1)(d);

inserted subdivision (1)(e); added subsection (2); and made minor changes in phraseology and style.

Retroactive Application

Section 2 of Ch. 93, Laws 1977 read "The provisions of subsections (1)(e) and (2) of 68-2618 apply retroactively to cases involving the death of a member, after July 1, 1976, as a direct and proximate result of injuries received in the course of employment."

Effective Date

Section 3 of Ch. 93, Laws 1977 provided the act should be effective upon its passage and approval. Approved March 25, 1977.

68-2619. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this act shall be paid in monthly annuities and shall not be increased, decreased, revoked, or repealed unless by an act of the legislative assembly of the state of Montana. However, there may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. 68-2619 by Sec. 19, Ch. 178, L. 1974; amd. Sec. 19, Ch. 332, L. 1977.

Amendments

The 1977 amendment added the last sentence.

68-2620. Retirement annuities exempt from state or municipal tax, sale, garnishment, attachment, or other process and shall be unassignable. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable except as specifically provided in 68-2620.1.

History: En. 68-2620 by Sec. 20, Ch. 178, L. 1974; amd. Sec. 8, Ch. 214, L. 1977.

Amendments

The 1977 amendment added the exception at the end of the section.

68-2620.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

History: En. 68-2620.1 by Sec. 9, Ch. 214, L. 1977.

68-2621. Designation of beneficiary. Every member may name a beneficiary by a written acknowledged designation properly filed with the board and change the beneficiary in like manner. The designation and any

changes may be filed with the board up until, but not after, the time of retirement.

History: En. 68-2621 by Sec. 21, Ch. 178, L. 1974; amd. Sec. 8, Ch. 59, L. 1977.

authority to" near the beginning of the first sentence; substituted "may" for "must" in the second sentence; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "member may" for "contributor shall have the

68-2622. Military service. (1) A member now on active duty in or hereafter inducted into the armed forces of the United States has the option to:

(a) continue payments into the account; or

(b) allow the board to make the payments during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to his former status as a sheriff.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service as a sheriff.

History: En. 68-2622 by Sec. 22, Ch. 178, L. 1974; amd. Sec. 9, Ch. 59, L. 1977.

requirements, he shall be given credit for his" at the beginning of subsection (2); substituted "as if it were service as a sheriff" for "shall be credited to and made a part of member's service allowance" at the end of subsection (2); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment inserted the subsection and subdivision designations; inserted "If a member chooses one of the options in subsection (1) and meets its

68-2622.1. Qualification of nonsheriff service in the public employees' retirement system. (1) A member who was a sheriff on July 1, 1974, may qualify nonsheriff membership service standing to his credit under the public employees' retirement system by submitting a written request to the board no later than January 1, 1978. Upon such a request, the member's accumulated contributions under the public employees' retirement system, together with regular interest thereon, and all contributions paid into that system by an employer, as defined in 68-1503(25), coincident with such accumulated contributions, together with regular interest thereon, shall be transferred from the public employees' retirement system retirement fund to the sheriff's retirement account, and credit for the service shall be transferred from the public employees' retirement system to the sheriff's retirement system.

(2) If a member who was a sheriff on July 1, 1974, has withdrawn his accumulated contributions from the public employees' retirement system, he may receive credit for his membership service in that system by submitting the request provided for in subsection (1) and depositing with the sheriffs' retirement account the amount provided for in 68-1906. Upon such a request and deposit, the employer contributions and credit for service shall be transferred as provided in subsection (1).

(3) Any service credit transferred under this section shall be treated as if it were service as a sheriff.

History: En. 68-2622.1 by Sec. 1, Ch. 145, L. 1977.

Title of Act

An act to provide that a sheriff may

qualify nonsheriff membership service in the public employees' retirement system for credit in the sheriff's retirement system.

68-2623. False statements or falsification of records illegal—penalties.

(1) No person shall knowingly make any false statement or permit to be falsified any record or records of this retirement system in an attempt to defraud the system.

(2) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any member or beneficiary receiving more or less than the person would have been entitled to had the records been correct, then, on the discovery of such error the board shall correct such error and shall adjust the payments which shall be made to the member or annuitant in such manner that the actuarial equivalent of the benefit to which the person was correctly entitled shall be paid.

(3) Any person violating any of the provisions of subsection (1) of this section shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail not exceeding one (1) year, or both.

History: En. 68-2623 by Sec. 23, Ch. 178,
L. 1974.

68-2624. Board may revoke, refuse, or suspend member's annuity for conviction of felony—injury or death due to wrongful conduct. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend disbursement of the state annuity, in its discretion, for as long a time as it deems necessary. Where the illness or injury causing a member to retire, or where the death of a member, or a member to be retired, is directly and proximately caused by such member's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend disbursement of the state annuity for as long as, in its discretion, it deems necessary.

History: En. 68-2624 by Sec. 24, Ch. 178,
L. 1974.

68-2625. Payments are in addition to those provided by Workmen's Compensation Act. All payments provided for in this act, except as provided in section 18 of this act [68-2618], are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

History: En. 68-2625 by Sec. 25, Ch. 178,
L. 1974.

68-2626. Optional retirement allowance. (1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2), at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 2—upon his death, one-half of the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 3—such other benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance, are the actuarial equivalent of his retirement allowance and have been approved by the board.

History: En. 68-2626 by Sec. 26, Ch. 178, L. 1974; amd. Sec. 10, Ch. 59, L. 1977.

Amendments

The 1977 amendment inserted subsection designations (1) and (2); redesignated former subdivisions (1) through (3) as subdivisions (2)(a) through (2)(c); inserted "A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2), at any time" at

the beginning of subsection (1); inserted "Option 1" at the beginning of subdivision (2)(a); deleted "having an insurable interest in the member's life" after "the person" in subdivisions (2)(a) and (2)(b); inserted "Option 2" at the beginning of subdivision (2)(b); inserted "Option 3" at the beginning of subdivision (2)(c); and made minor changes in phraseology, punctuation and style.

68-2627. Transfer of dormant accumulated deductions. The board may, in its discretion, transfer the accumulated deductions of a member to the employer's account in the sheriffs' retirement account if the member's account has been dormant for a period of 10 years. However, no right of the member may be jeopardized by the transfer, and the accumulated deductions must be transferred back to the member's name upon his subsequent reentry into the system.

History: En. 68-2627 by Sec. 27, Ch. 178, L. 1974; amd. Sec. 11, Ch. 59, L. 1977.

Amendments

The 1977 amendment substituted "may"

for "shall" after "no right of the member" in the second sentence; and made minor changes in phraseology, punctuation and style.

68-2628. Ineligibility for membership in public employees' retirement system. (1) After July 1, 1974, no sheriff is eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs, except as provided in 68-2607.

(2) No provision of this act is to be construed as to deny any sheriff any benefits accrued under provisions of the public employees' retirement system prior to July 1, 1974.

History: En. 68-2628 by Sec. 28, Ch. 178, L. 1974; amd. Sec. 12, Ch. 59, L. 1977.

Amendments

The 1977 amendment substituted "The Public Employees' Retirement System Act

do not apply to sheriffs, except as provided in 68-2607" for "said law shall not apply to sheriffs" at the end of subsection (1); and made minor changes in phraseology and style.

68-2629. Severability clause. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of the applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 68-2629 by Sec. 29, Ch. 178, L. 1974.

CHAPTER 27—DEFERRED COMPENSATION PLAN

Section

- 68-2701. Deferred compensation programs permitted.
- 68-2702. Department of administration authorized to make contracts.
- 68-2703. Payroll deductions—contracts for administrative services.
- 68-2704. "Employee" defined.
- 68-2705. Payments authorized—proper use of public assets.
- 68-2706. No other retirement programs affected.
- 68-2707. No liability to public entity.
- 68-2708. What private businesses may provide services.
- 68-2709. Severability.

68-2701. Deferred compensation programs permitted. The state or any county, city, town, or other political subdivision may establish, after reaching agreement with any employee or the employee's representative, if one has been designated or certified, a program for the employee to defer any portion of his compensation up to the maximum allowed by the Internal Revenue Code in a plan qualified for exemption under applicable sections of the Internal Revenue Code.

History: En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977.

Title of Act

An act relating to the authority of public employees to enter into a deferred compensation plan.

Amendments

The 1977 amendment substituted "program for the employee to defer any portion of his compensation" for "program for employees to defer any portion that employee's compensation" in the middle of the section; and made a minor change in punctuation.

68-2702. Department of administration authorized to make contracts. The department of administration is hereby authorized to enter into a contractual agreement with any employee or his representative, if one has been designated or certified, on behalf of the state to defer a portion of the employee's compensation through a qualified plan agreed upon by the employee or his representative. The department of administration may establish rules for the proper operation of plans agreed upon under this section.

History: En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977.

Amendments

The 1977 amendment added "agreed upon under this section" to the end of the second sentence; and made minor changes in phraseology and punctuation.

68-2703. Payroll deductions—contracts for administrative services. The co-ordination of the deferred compensation program shall be under the

direction of the department of administration or his designee or the appropriate officer designated by the county, city, town, or other political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The co-ordinator of the deferred compensation program may contract with a private corporation or institution for providing consolidated billing and other administrative services.

History: En. 68-2703 by Sec. 3, Ch. 264,
L. 1974.

68-2704. "Employee" defined. For the purposes of this act, "employee" means any person whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision, for which compensation is paid.

History: En. 68-2704 by Sec. 4, Ch. 264,
L. 1974.

68-2705. Payments authorized—proper use of public assets. Notwithstanding any other provision of law to the contrary, the department of administration or the appropriate officer of the county, city, town, or other political subdivision designated to co-ordinate the deferred compensation program is hereby authorized to make payments to qualified plans designated by this act. Such payments shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

History: En. 68-2705 by Sec. 5, Ch. 264,
L. 1974.

68-2706. No other retirement programs affected. The deferred compensation program established by this act shall exist and serve in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code of 1954, established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall affect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program shall not be subject to taxation until distribution is actually made to the employee. For purposes of this act any qualified private pension plans now in existence shall qualify under this act.

History: En. 68-2706 by Sec. 6, Ch. 264,
L. 1974.

68-2707. No liability to public entity. There shall be no financial liability of the state, county, city, town or other political subdivision for any losses incurred by any plan established under this act.

History: En. 68-2707 by Sec. 7, Ch. 264,
L. 1974.

68-2708. What private businesses may provide services. Qualified deferred compensation plans may be established only with companies, trusts, or agents licensed to do business in the state of Montana.

History: En. 68-2708 by Sec. 8, Ch. 264, legislative intent of this act that all" L. 1974; amd. Sec. 3, Ch. 60, L. 1977. from the beginning of the section; substituted "may" for "shall" after "compensation plans"; and made a minor change in punctuation.

Amendments. The 1977 amendment deleted "It is the

68-2709. Severability. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 68-2709 by Sec. 9, Ch. 264, L. 1974.

TITLE 69—PUBLIC HEALTH AND SAFETY

Chapter

14. Construction of temporary floors and scaffolds, 69-1401.
15. Boiler inspection—engineers license, 69-1501 to 69-1505, 69-1507 to 69-1517.
16. Hoisting engines—license of operators, 69-1601, 69-1601.1, 69-1602, 69-1603, 69-1606 to 69-1608.
18. Public safety in case of fire—fire escapes and apparatus—inspections, 69-1802, 69-1807, 69-1808.
19. Explosives—regulation of manufacture, storage, sale and possession, 69-1923, 69-1925, 69-1929.
21. Building and mobile home construction standards, 69-2105, 69-2107, 69-2109 to 69-2114, 69-2119, 69-2122 to 69-2125.
22. Blood and blood products, 69-2203 to 69-2205.
27. Fireworks regulation, 69-2701, 69-2702.
33. Geophysical exploration, 69-3303 to 69-3305.1, 69-3308.
34. Sanitarians, 69-3410 to 69-3423.
35. Motorboat and vessel regulation, 69-3502 to 69-3508.1, 69-3510, 69-3512 to 69-3514, 69-3516, 69-3516.1, 69-3517, 69-3518.
36. Ambulance service, 69-3604 to 69-3613.
39. Air pollution, 69-3906 to 69-3909.1, 69-3911, 69-3912, 69-3914 to 69-3919, 69-3921, 69-3921.1.
40. Refuse disposal areas, 69-4001, 69-4001.1, 69-4002 to 69-4020.
41. Board and department of health and environmental sciences—powers and duties, 69-4102, 69-4104, 69-4106, 69-4110 to 69-4112, 69-4118.
42. Occupational health, 69-4206 to 69-4209, 69-4211 to 69-4221.
43. Tuberculosis control, 69-4304, 69-4316, 69-4317.
45. Vital statistics, 69-4401, 69-4404, 69-4405, 69-4409, 69-4420, 69-4421, 69-4428.1.
45. Local boards of health, 69-4502 to 69-4504, 69-4508 to 69-4510, 69-4519.
46. Venereal disease, 69-4602, 69-4603, 69-4610.
48. Water pollution, 69-4801, 69-4802, 69-4804 to 69-4806, 69-4807.1, 69-4808.1 to 69-4808.5, 69-4809.1, 69-4809.2, 69-4812, 69-4814, 69-4820 to 69-4827.
49. Public water supply, 69-4902 to 69-4904, 69-4905.1, 69-4905.2, 69-4907.
50. Sanitation in subdivisions, 69-5001 to 69-5003, 69-5005 to 69-5010.
51. Cadavers, 69-5104.
52. Hospitals and health care facilities, 69-5201, 69-5203.1, 69-5204, 69-5205, 69-5207, 69-5210, 69-5212, 69-5213, 69-5220, 69-5222 to 69-5224.
53. Hospitals, medical and related facility survey and construction, 69-5301 to 69-5303, 69-5305, 69-5307.
54. Cesspools, septic tanks, and privies, 69-5401 to 69-5405, 69-5407, 69-5408.
55. Public swimming pools and bathing places, 69-5502.
56. Tourist campgrounds and trailer courts, 69-5601 to 69-5607.
57. General penalty, 69-5701.
58. Control of ionizing radiation, 69-5803, 69-5804, 69-5806, 69-5812, 69-5817 to 69-5821.
59. Water treatment plants and distribution systems, 69-5902, 69-5903, 69-5906 to 69-5911.
60. Refuse disposal districts, 69-6002, 69-6004 to 69-6007, 69-6010, 69-6012, 69-6013.
61. Consent by minors for medical services, 69-6101 to 69-6107.
64. Voluntary sterilization—state board of eugenics, 69-6403, 69-6404, 69-6406.
65. Montana Environmental Policy Act, 69-6501 to 69-6518.
66. Passenger tramways, 69-6601, 69-6602, 69-6605 to 69-6617.
67. Diagnostic tests for pregnant women and newborn infants, 69-6701 to 69-6713.
68. Motor vehicle wrecking facilities, 69-6801 to 69-6812.
69. Abortion counselors and counseling services, Repealed—Section 1, Chapter 42, Laws of 1977.
70. Emergency medical services program, 69-7001 to 69-7010.
71. Consumer Product Safety Act, 69-7101 to 69-7113.
72. Definition of death, 69-7201.
73. Home health agencies, 69-7301 to 69-7310.
74. Asbestos insulation, 69-7401 to 69-7407.

CHAPTER 14—CONSTRUCTION OF TEMPORARY FLOORS AND SCAFFOLDS

Section

69-1401. Construction of scaffolds.

69-1401. (2672) Construction of scaffolds. All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, of sufficient width, and properly secured so as to ensure the safety of persons working on them or passing under them or by them and to prevent them from falling or to prevent any material that may be used, placed, or deposited on them from falling.

History: En. Sec. 1, Ch. 130, L. 1963;
amd. Sec. 8, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology.

69-1402. (2673) Temporary floors for protection of workmen.**Control of Premises**

Unsuccessful bidder on a contract to do masonry work, hired by the successful bidder to work as his foreman, who also undertook to supply scaffolding and other equipment, was not liable for injury to an employee who fell from an improperly

erected scaffold, since it appeared that at the time of the accident, defendant was functioning as an employee of the successful bidder, who therefore became the "person having direct and immediate control or supervision" of the premises. *Boyer v. Kloepfer*, — M —, 554 P 2d 1116.

69-1404. (2675) Guarding of stairways, openings, etc.**Control of Premises**

Construction company was not liable to building owner's employee for injuries incurred in fall through hole in floor as result of construction company's removing equipment, where construction company

had completed work over two months prior to fall and was therefore not in immediate or direct control or supervision of building. *Hannifin v. Cahill-Mooney Constr. Co.*, 159 M 413, 498 P 2d 1214.

CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

Section

- 69-1501. Boiler rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors.
- 69-1502. Qualifications of boiler inspectors.
- 69-1503. Inspection of boilers—boiler installations.
- 69-1504. Inspection of boilers—further requirements in making inspection.
- 69-1505. Inspection of boilers—material to be used.
- 69-1507. Duty of owner to permit inspection—division action—costs and expenses.
- 69-1508. Licenses required—penalty for operating without license.
- 69-1509. Classification and licensing of engineers.
- 69-1510. Complaints and revocation of license.
- 69-1511. Certificate of inspection—wrongfully issuing certificate of inspection or licenses as misdemeanor.
- 69-1512. Fees for special inspection or examination.
- 69-1513. Review of license rejection.
- 69-1514. Division decision.
- 69-1515. Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.
- 69-1516. Certificates must be renewed yearly—failure to renew.
- 69-1517. Operation of boiler or steam engine without license.

69-1501. Boiler rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors. (1) The division of workers' compensation shall formulate definitions, rules and regulations for the safe construction, installation, operation, inspection and

repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nation wide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The division shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

(3) In addition to the state boiler inspectors the division shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and may accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977.

Amendments

The 1971 amendment substituted "a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment" for "a practical steam operating engineer of boilers" in the third sentence of the former first paragraph of subsection (1); inserted "shall be commissioned by the national board of boilers and pressure vessels inspectors and" in the third sentence of the former first paragraph of subsection (1); substituted "a Montana registered professional mechanical engineer" for "a graduate mechanical engineer" at the end of the third sentence of the former first paragraph of subsection (1); substituted "whenever required" for "twice each year" at the end of the former first paragraph of subsection (1); inserted "operation" in

the first sentence of the first paragraph of subsection (1); deleted "not to exceed four (4)" before "state inspectors" in subsection (2); inserted "duties" in subsection (2); and made minor changes in phraseology.

The 1975 amendment deleted the first two paragraphs of subsection (1), for which see parent volume and 1971 amendment note; substituted "The division of workers' compensation shall" at the beginning of subsection (1) for "The committee shall act in a technical advisory capacity to the industrial accident board and shall"; redesignated the last paragraph as subsection (3); and substituted "division" for "industrial accident board" in subsections (2) and (3).

The 1977 amendment substituted "may" for "shall" before "accept the inspection reports of such special inspectors" in the first sentence of subsection (3).

Cross-References

Committee abolished and functions transferred, sec. 82A-1005(2).

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

69-1502. (2713) Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least ten years of actual experience in the operation of steam engines, steam boilers, and steam machinery, and who has not held for at least three (3) years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R. C. M. 1921; amd. Sec. 2, Ch. 225, L. 1971.

Amendments

The 1971 amendment reduced the stationary engineer's license requirement from five years to three years.

69-1503. (2714) **Inspection of boilers—boiler installations.** (1) The inspector of boilers must inspect all boilers and steam generators before the same are used, and all persons who bring into this state, for operation in this state, any boiler or boilers must notify the division stating the number and kind of boilers, and where they are to be located and operated in this state, and must secure from the division a certificate of inspection before boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Upon written application, longer inspection intervals may be authorized by the division. Any owner, operator or user who opens a boiler or boilers between inspections for repair or other reasons must notify the division of such action and such boiler or boilers shall at the discretion of the division be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation. Any person failing to give notice to the division as herein provided, or who operates such boilers without a certificate from the division, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) When necessary, the boiler inspector shall subject boilers, **except** those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure shall not exceed one hundred fifty per cent (150%) of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3) New boiler installations. No boiler which does not conform to the rules adopted by the division governing new construction and installation shall be installed and operated in this state after twelve (12) months from the date upon which the first rules under this act pertaining to new construction and installation shall have become effective, unless the boiler is of special design or construction, and is not covered by the rules, nor is in any way inconsistent with such rules, in which case a special installation and operating permit may at its discretion be granted by the division.

History: Ap. p. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975.

Amendments

The 1971 amendment substituted "all boilers" for "all steam boilers" near the beginning of subsection (1); inserted "for operation in this state" in the first sentence of subsection (1); substituted "board" for "boiler inspector" in four

places in subsection (1); deleted "where they had heretofore been located" following "number and kind of boilers" in the first sentence of subsection (1); inserted new second and third sentences in subsection (1); inserted "When necessary" at the beginning of subsection (2); increased the hydrostatic pressure testing requirement specified in the first sentence

of subsection (2) from 133 $\frac{1}{3}$ % to 150%; and made minor changes in phraseology.

The 1975 amendment substituted "division" for "board" throughout the section; substituted "rules adopted by the division" for "rules and regulations formulated by the committee" in subsection (3); deleted "and regulations" after "rules" throughout subsection (3); and made minor changes in phraseology.

69-1504. (2715) Inspection of boilers—further requirements in making inspection. (1) The inspector must satisfy himself that:

(a) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and are properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;

(b) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(c) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam.

(2) A renter, user, or owner of a boiler or a person who tampers with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate is guilty of a misdemeanor.

(3) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 $\frac{1}{2}$ shall be used in determining the safe working pressure allowed on the boiler. If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure. If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used in determining the safe working pressure. If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure. On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on them. On braces made of solid material 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed. No cast iron may be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch.

History: Ap. p. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R. C. M. 1921; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977.

Amendments

The 1971 amendment substituted "suitable relieving capacity ratings" for "suitable dimension" near the beginning of

subsection (1); substituted "safety valves are properly adjusted" for "safety-valve weights are properly adjusted" in subsection (1); deleted a second paragraph of subsection (1), for text of which see parent volume; and deleted from subsection (2) a third sentence reading "But in any case the inspector may use a higher factor if the conditions are such as to warrant it."

The 1977 amendment divided former subsection (1) into subsections (1) and (2); inserted subdivisions designations (1)(a) through (1)(c); redesignated for-

mer subsection (2) as subsection (3); and made minor changes in style, punctuation and phraseology.

69-1505. (2716) Inspection of boilers—material to be used. No boiler or steam pipe, nor any of the connections thereto, shall be approved which is made in whole or in part of bad material, or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam generator which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R. C. M. 1921; amd. Sec. 5, Ch. 225, L. 1971.

Amendments

The 1971 amendment substituted "shall be approved" for "must be approved" in the first sentence.

69-1507. (2718) Duty of owner to permit inspection—division action—costs and expenses. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same. In case the owner, operators, or manager of any boiler is notified by the inspector to have the boiler ready for inspection on a certain day, and fails to have such boiler ready for inspection at such time, the inspector shall notify the division to gain access to the boiler. Any person failing to immediately comply with division directed access to the boiler shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. The owner, engineer or manager of any boiler who has refused access resulting in a division order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R. C. M. 1921; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975.

Amendments

The 1971 amendment inserted "engineers" and the reference to water boilers in the first sentence; inserted "operators" in the second sentence; substituted "shall notify the board to gain access to said boiler" at the end of the second sentence for "shall at once seal up the firebox in such boiler, and such seal must not be removed from the firedoor without a written order from the inspector"; substituted "failing to immediately comply with board

directed access to said boiler" in the third sentence for "tampering with or removing said seal"; substituted "The owner, engineer or manager of any boiler who has refused access resulting in a board order must pay" at the beginning of the fourth sentence for "If the owner or manager of any boiler that has been so sealed desires to have the same inspected before the next regular visit of the inspector to the district where said boiler is situated, he must pay"; inserted "directed by such order" near the end of the fourth sentence; and made minor changes in phraseology.

The 1975 amendment substituted "division" for "board" throughout the section; and made minor changes in phraseology.

69-1508. (2719) Licenses required—penalty for operating without license. No person may be granted a license to operate steam or water boilers and steam machinery under the provisions of this article who has not met the qualifications for licensing, been found to be competent by examination to perform the duties of an engineer, and received a license so to act. A person who operates a boiler or steam engine without first obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined no less than \$50 or more than \$100 or be imprisoned in the county jail for any term not to exceed 60 days, or both.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R. C. M. 1921; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977.

Amendments

The 1971 amendment substituted "steam or water boilers and steam machinery" for "steam boilers or steam machinery" near the beginning of the first sentence; sub-

stituted "met the qualifications for licensing and found to be competent by examination" for "been examined by the inspector and found competent" in the first sentence; deleted "written or printed" before "license" near the end of the first sentence; deleted "steam" before "boiler" near the beginning of the second sentence; and made minor changes in phraseology.

The 1977 amendment made minor changes in style, punctuation and phraseology.

69-1509. (2720) Classification and licensing of engineers. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in the preceding section, are divided into four classes, namely: first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into four classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.

(3) Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and meet the following minimum requirements for the class of engineer's license for which application is being made:

(a) An applicant for a low-pressure engineer's license must have at least 3 months' full-time experience in the operation of a boiler in this

classification, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(b) An applicant for a third-class engineer's license must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(c) An applicant for a second-class engineer's license must:

(i) have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(ii) hold a valid third-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

(d) An applicant for a first-class engineer's license must:

(i) have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification;

(ii) hold a valid second-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(iii) hold a valid third-class engineer's license and have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully passed a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

(4) Allowable exceptions or variances to the minimum requirements set out in subsection (3) of this section are as follows:

(a) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in subsection (3) of this section, successfully passing a written examination

prescribed by the division, and found to be competent to operate a boiler and steam-driven machinery in that classification shall be granted a license in that classification.

(b) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the division may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(c) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other division-approved institution or training program in the classification for which he is applying may, at the discretion of the division, be credited with a maximum of 6 months' experience toward a first, second, or third-class engineer's license.

(5) None of the licenses named in subsections (1) and (2) of this section entitle its holder to operate a traction engine. A person who is entrusted with the care and management of traction engines or boilers on wheels is required to pass an examination testing his competency to operate that class of machinery and procure a traction license. A traction license does not entitle its holder to operate any other class of steam machinery. An applicant for a traction engineer's license must have at least 6 months' full-time experience in the operation of steam traction engines, successfully pass a written examination prescribed by the division, have passed his 18th birthday, and be found to be competent to operate a traction engine. The division, at its discretion, may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R. C. M. 1921; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977.

Amendments

The 1971 amendment inserted "operation" near the beginning of subsection (1); substituted "steam or water boilers and steam machinery" for "steam machinery" in the first sentence of subsection (1); completely rewrote subsections (2) and (3), including therein the former second sentence of subsection (1); and completely rewrote the third and fourth sentences of subsection (4). For prior text, see parent volume.

The 1973 amendment reduced the ages specified in subdivisions (3) (c) (1) and (3) (c) (2) from twenty to eighteen years, and in subdivisions (3) (d) (1), (3) (d) (2) and (3) (d) (3) from twenty-one to eighteen years; and made minor changes in style.

The 1975 amendment substituted "division" for "board" throughout the section.

The 1977 amendment substituted roman for arabic numerals in the subdivision designations under subdivisions (3)(c) and (3)(d); redesignated former subdivision (3)(c) as subsection (4) and redesignated former subdivisions (3)(e)(1) through (3)(e)(3) as (4)(a) through (4)(c); redesignated former subsection (4) as subsection (5); and made minor changes in style, punctuation and phraseology.

69-1510. (2721) Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he through negligence, want of skill, or inattention to duty, permitted his boiler(s) to burn or otherwise become in bad condition, or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the division to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of the engineer.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R. C. M. 1921; amd. Sec. 9, Ch. 225, L. 1971; amd. Sec. 29, Ch. 182, L. 1975.

Amendments

The 1971 amendment inserted "or un-

der the influence of drugs"; substituted "board" for "inspector or assistant inspector"; and made minor changes in phraseology.

The 1975 amendment substituted "division" for "board" near the end of the section; and made a minor change in phraseology.

69-1511. (2722) Certificate of inspection—wrongfully issuing certificate of inspection or licenses as misdemeanor. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments, or grants a license to any person to act as engineer contrary to the provisions of this article, is guilty of a misdemeanor. All certificates of inspection, operating certificates and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R. C. M. 1921; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973.

Amendments

The 1971 amendment substituted "inspector of boilers and safety" for "boiler inspector's office" at the end of the first

sentence; deleted "steam" before "boilers" in the second sentence; and added the third sentence.

The 1973 amendment deleted "and feloniously" following "willfully" near the beginning of the second sentence; and substituted "is guilty of a misdemeanor" for "is punishable under the provisions of section 94-35-214" at the end of the second sentence.

69-1512. (2733) Fees for special inspection or examination. (1) Whenever, upon request of the owner or operator of any boiler, it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law shall be charged and collected by the division.

(2) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a) First class	\$30
(b) Second class	\$20
(c) Third class	\$12
(d) Low pressure	\$ 8
(e) Traction	\$12
(f) Renewal of license	\$ 4
(g) Replacement of lost certificate	\$ 2

(3) Each application shall be accompanied by a payment equal to 50% of the license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

(4) In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977.

Amendments

The 1971 amendment changed the preliminary paragraph of subsection (1) to provide for payment to the industrial accident board instead of the state inspector of boilers; inserted "based on safety valve setting" at the end of the preliminary paragraph of subsection (1); substituted "the board shall initiate the necessary legal action to collect said fee" for "said inspector is authorized to seal the firebox of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager" at the end of the first sentence of the final paragraph of subsection (1); substituted "Failure of any person to immediately abide with results of such board action" for "Any person who tampers with or removes such seal without such written order" at the beginning of the second sentence of the final paragraph of subsection (1); substituted "by the

industrial accident board" for "by the inspector at the time such special inspection is made" at the end of subsection (2); inserted a new paragraph now appearing as the first paragraph of subsection (4); reduced the waiting time required by the second paragraph of subsection (4) from 90 to 45 days; deleted from the end of the section sentences reading "But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room"; and made minor changes in phraseology.

The 1975 amendment substituted "division" for references to the industrial accident board throughout the section; and made minor changes in phraseology.

The 1977 amendment deleted a former subsection (1) which provided a schedule of inspection fees to be paid to the division and a penalty for failure to pay the fee; redesignated former subsections (2) through (4) as subsections (1) through (3); deleted "in addition to the fees herein prescribed" after "per diem allowed by law" in subsection (1); inserted the subsection (4) designation; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume and previous amendment notes.

69-1513. (2724) Review of license rejection. If any person who has applied for a license under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within forty-five (45) days after the date of his rejection, in writing set forth the causes of his grievance and request a division review. Such request must be addressed to the division and shall be signed by the rejected applicant. Within two days after receiving such request, the division shall notify the applicant in writing that on a certain day, which shall not be less than five nor more than thirty (30) days after the date the division receives the written request, the division shall review and evaluate the application. The applicant may appear in person at the review if he so desires. At least two days before the day set for the review the applicant may designate in writing to the division the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

History: En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R. C. M. 1921; amd. Sec. 12, Ch. 225, L. 1971; amd. Sec. 31, Ch. 182, L. 1975.

Amendments

The 1971 amendment rewrote this section so as to provide for board review

rather than re-examination by the inspector, and made numerous changes. For prior text, see parent volume.

The 1975 amendment substituted "division" for "board" throughout the section; substituted "division" for "committee" in the third sentence; and made minor changes in phraseology.

69-1514. (2725) Division decision. After the review is completed, if the division decides that the applicant is entitled to the license he has applied for, the division shall without delay issue a license accordingly, but if the division rejects the applicant, it is a final rejection, and he must not be granted another examination for the space of forty-five (45) days after such last rejection, when he may again apply as provided by section 69-1512.

History: En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R. C. M. 1921; amd. Sec. 13, Ch. 225, L. 1971; amd. Sec. 32, Ch. 182, L. 1975.

Amendments

The 1971 amendment completely rewrote

this section. For prior text, see parent volume.

The 1975 amendment substituted "division" for "board" and "committee" throughout the section; and made minor changes in phraseology.

69-1515. (2726) Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler. (1) This act shall not apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers operated at not over fifteen (15) pounds per square inch gauge pressure in private residences or apartments of six (6) or less families or to hot water heating or supply boilers operated at not over fifty (50) pounds per square inch gauge pressure and temperatures not over two hundred fifty degrees Fahrenheit (250°F) when in private residences or apartments of six (6) or less families. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. No persons operating any of the engines or boilers hereinbefore exempted from the operation of this article shall be required to procure license from the division.

(2) Any person purchasing any boiler whether traction or stationary shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the division and shall notify the division as to where the boiler will be installed and operated. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other boilers and steam engines, except as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1923; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975.

Amendments

The 1971 amendment reduced the maximum pressure specified by the second sentence of subsection (1) with temperatures up to 250 degrees from 160 to 50 pounds per square inch; deleted from subsection (1) a third sentence reading

"Locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the provisions of this article"; deleted from the beginning of subsection (2) two sentences reading "It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify

the inspector as herein provided shall be deemed guilty of a misdemeanor"; deleted "steam" before "boiler" in three places in subsection (2); substituted references to the board for references to the boiler inspector in the first sentence of subsection (2); and made minor changes in phraseology.

The 1975 amendment substituted "division" for "board" throughout the section; and made minor changes in phraseology.

69-1516. (2727) Certificates must be renewed yearly—failure to renew. All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. Any engineer failing to renew his license as herein provided, or within at least thirty days after the date of expiration shall be assessed the fee for the original license of the same grade, before the license will be reissued. Any engineer failing to renew his license within twelve months of the date of expiration, must reapply for an engineer's license as required by the provisions of section 69-1509; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have ninety (90) days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971.

Amendments

The 1971 amendment deleted a second

sentence reading "The fee for renewal is two dollars (\$2.00) in all cases"; inserted that part of the third sentence preceding the proviso; increased the time allowed for renewal after discharge from military service from sixty to ninety days; deleted a second paragraph, for text of which see parent volume; and made minor changes in phraseology.

69-1517. (2728) Operation of boiler or steam engine without license. It is unlawful for any person in this state to operate a stationary boiler or steam engine, or any boiler or steam engine other than engines and boilers exempted by the provisions of section 69-1515, without a license granted under the provisions of this article. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may, for fifteen days employ any person of the age of eighteen years or over whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the division. The person so employing the unlicensed engineer shall immediately notify the division. But no owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of

this act, to run or operate any of the boilers or engines subject to the provisions of this act.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R. C. M. 1921; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975.

Amendments

The 1971 amendment deleted "railroad locomotives or other" before "engines and boilers exempted" in the first sentence; deleted "steam" before "engine or boiler" in two places; deleted "refusal to work" after "sickness" in the third sentence; deleted "operated in remote districts, which

would retard the work to be performed" after "engine or boiler" in the first part of the third sentence; added "he shall have reasonable qualifications acceptable to the board" at the end of the third sentence; substituted "board" for "inspector or assistant inspector" at the end of the fourth sentence; inserted "boilers or" before "steam machinery" in the fifth sentence; and made minor changes in phraseology.

The 1975 amendment substituted "division" for "board" in two places.

69-1518. (2729) Repealed.

Repeal

Section 69-1518 (Sec. 7, Ch. 32, L. 1905; Sec. 16, Ch. 30, L. 1913), relating to sale

of secondhand boilers, was repealed by Sec. 24, Ch. 225, Laws 1971.

CHAPTER 16—HOISTING ENGINES—LICENSE OF OPERATORS

Section

- 69-1601. Operators of hoisting engines must procure licenses.
- 69-1601.1. Crane and hoist licenses.
- 69-1602. Application and fee for license—renewal and revocation of license.
- 69-1603. Scope of license—exemptions.
- 69-1606. Renewal of application by rejected candidate.
- 69-1607. Penalty for operating machinery without license.
- 69-1608. Crane inspector.

69-1601. (2730) Operators of hoisting engines must procure licenses.

(1) It is unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects, without first obtaining a license therefor from the division as herein provided. Except that in emergencies under section 69-1517 relating to the employment of unlicensed engineers, the provisions of that section shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section shall not apply to hoists and cranes defined in section 69-1601.1.

(5) The provisions of this act shall not apply to forklifts, front-end and rear-end loaders.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R. C. M. 1921; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 182 and once by Ch. 456. Neither amendatory act mentioned the other, but the amendment by Ch. 456 included the changes made by Ch. 182.

Amendments

The 1971 amendment designated the former provision as subsection (1); completely rewrote the first sentence of subsection (1), for previous text of which see parent volume; and added subsections (2) and (3).

Chapter 182, Laws of 1975, substituted "division" for "board" in subsection (1).

Chapter 456, Laws of 1975, inserted "or material" after "personnel" throughout the section; deleted "or any air compressor operated by any power" after "construction project" in the first sentence of subsection (1); substituted "division" for "board" in subsection (1); substituted "in emergencies under section 69-1517" for "in emergencies the provisions of section 69-1517" in the second sentence of subsection (1); added subsections (4) and (5); and made minor changes in phraseology, punctuation and style.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

69-1601.1. Crane and hoist licenses. (1) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above 6 tons and a boom length of more than 25 feet, without first obtaining a license from the division. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use. In emergencies, 69-1517 shall apply to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) An applicant for a first-class hoisting engineer's license shall have: (i) no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license, or shall otherwise be shown to be equivalently competent by examination; (ii) passed his 18th birthday; and (iii) passed a written test prescribed by the division. An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) Applicants for a second-class hoisting engineer's license shall: (i) have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination; (ii) successfully pass a written examination prescribed by the division; and (iii) have passed their 18th birthday. An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) Applicants for a third-class hoisting engineer's license shall successfully pass a written test prescribed by the division, and shall be at least 18 years old, before receiving this license.

(3) The division shall reexamine each licensed engineer or operator every 5 years during the anniversary month of his license, if the licensee has not worked at the trade for five (5) years.

History: En. 69-1601.1 by Sec. 2, Ch. 456, L. 1975; amd. Sec. 1, Ch. 148, L. 1977.

Title of Act

An act to amend sections 69-1601 through 69-1603, 69-1606, and 69-1607, R. C. M. 1947, relating to qualifications and licensing of hoisting engineers; and repealing section 69-1604, R. C. M. 1947.

Amendments

The 1977 amendment deleted "or four (4) years' experience operating hoisting equipment covered by this section" in subdivision (2)(b)(i) after "engineer's license"; substituted "oilers who move truck cranes" for "oilers only" at the end of subdivision (2)(e); and made minor changes in phraseology, punctuation and style.

69-1602. (2731) Application and fee for license—renewal and revocation of license. Application for licenses shall be made to the division in the same manner, and the same fee shall be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery, under chapter 15 of this title. The license is valid for one (1) year from the date of issuance, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery. The division may revoke any license issued under this act for any of the reasons for which the division may revoke a license to operate steam engines, boilers, or steam-driven machinery.

History: En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R. C. M. 1921; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 182 and once by Ch. 456. Neither amendatory act mentioned the other, but the amendment by Ch. 456 included the changes made by Ch. 182.

Amendments

The 1971 amendment substituted refer-

ences to the board for references to the state boiler inspector and made minor changes in phraseology.

Chapter 182, Laws of 1975, substituted "division" for "board" in three places.

Chapter 456, Laws of 1975, substituted "division" for "board" in three places; added "and steam-driven machinery under chapter 15 of this title" to the first sentence; added "or steam-driven machinery" to the second and third sentences; and made minor changes in phraseology and style.

69-1603. (2732) Scope of license — exemptions. (1) A license granted under this act entitles the holder to operate any of the machinery named in section 69-1601 and section 69-1601.1, and the license shall specify that machinery, but no license issued shall authorize or qualify the person to whom issued to operate a boiler, steam engine, steam-driven machinery, or air compressor.

(2) This act shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

History: En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R. C. M. 1921; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975.

Amendments

The 1971 amendment designated the former provisions as subsection (1); deleted former second and third sentences, for text of which see parent volume;

added a new subsection (2); and made minor changes in phraseology.

The 1975 amendment inserted "and section 69-1601.1" in subsection (1); added "steam-driven machinery, or air compressor" at the end of subsection (1); inserted "air compressors" in subsection (2); and made minor changes in phraseology, punctuation and style.

69-1604. (2733) Repealed.**Repeal**

Section 69-1604 (Sec. 4, Ch. 104, L. 1915; Sec. 20, Ch. 255, L. 1971; Sec. 27, Ch. 94, L. 1973), relating to first and second class

licenses for operators of hoisting engines was repealed by Sec. 9, Ch. 456, Laws of 1975.

69-1605. (2734) Repealed.**Repeal**

Section 69-1605 (Sec. 5, Ch. 104, L. 1915), relating to machinery which a li-

censee is qualified to operate, was repealed by Sec. 24, Ch. 225, Laws 1971.

69-1606. (2735) Renewal of application by rejected candidate. Any person who has applied for a license under this act and has been rejected, may renew his application for a license within the time and in the manner prescribed in sections 69-1513 and 69-1514.

History: En. Sec. 6, Ch. 104, L. 1915; re-en. Sec. 2735, R. C. M. 1921; amd. Sec. 5, Ch. 456, L. 1975.

Amendments

The 1975 amendment deleted "regularly" before "applied"; and made minor changes in phraseology.

69-1607. (2736) Penalty for operating machinery without license. Every person who operates any of the engines and machinery named in 69-1601 or 69-1601.1 for which a license is required, without first obtaining a license as required by the sections referred to above, and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate such engines or machinery or any person who violates any of the provisions of this act is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R. C. M. 1921; amd. Sec. 21, Ch. 225, L. 1971; amd. Sec. 7, Ch. 456, L. 1975; amd. Sec. 2, Ch. 148, L. 1977.

Amendments

The 1971 amendment deleted "knowingly" before "permits any unlicensed person."

The 1975 amendment made minor changes in style.

The 1977 amendment inserted "or 69-

1601.1" near the beginning of the section; deleted "and upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail not more than six (6) months, or by both such fine and imprisonment" from the end of the section; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 3 of Ch. 148, Laws 1977 read "Section 69-1609, R.C.M. 1947, is repealed."

69-1608. Crane inspector. The division shall employ at least one (1) crane inspector. He shall hold a first-class hoisting engineer's license under this act for one (1) year and have three (3) years' experience operating cranes.

History: En. 69-1608 by Sec. 6, Ch. 456, L. 1975.

Repealing Clause

Section 9 of Ch. 456, Laws 1975 read "Section 69-1604, R. C. M. 1947, is repealed."

69-1609. Repealed.**Repeal**

Section 69-1609 (Sec. 8, Ch. 456, L. 1975), relating to the application of the

act to persons holding a license on the effective date of the act, was repealed by Sec. 3, Ch. 148, Laws 1977.

CHAPTER 17—TRACTION ENGINES—CAPACITY—INSPECTION

69-1701, 69-1702. (4209, 4210) Repealed.**Repeal**

Sections 69-1701, 69-1702 (Secs. 1, 2, 1971), relating to the capacity and inspection of traction engines, were repealed by Sec. 1, Ch. 74, Laws 1977.

69-1703. (4211) Repealed.**Repeal**

Section 69-1703 (Sec. 3, Ch. 125, L. 1913), establishing a penalty, was repealed by Sec. 24, Ch. 225, Laws 1971.

CHAPTER 18—PUBLIC SAFETY IN CASE OF FIRE—FIRE ESCAPES AND APPARATUS—INSPECTIONS

Section

69-1802. Application of act—definitions.

69-1807. Fire extinguisher requirements.

69-1808. Inspection by fire chiefs, county sheriffs, or deputy fire marshals—review of plans by fire marshal—permits—notice of inadequate equipment—compliance—enforcement.

69-1802. Application of act—definitions. Sections 69-1801 through 69-1810 apply to the occupancies defined below:

(1) “Assembly occupancy” means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

- (a) armories;
- (b) assembly halls;
- (c) auditoriums;
- (d) bowling alleys;
- (e) broadcasting studios;
- (f) chapels;
- (g) churches;
- (h) club rooms;
- (i) dance halls;
- (j) exhibition rooms;
- (k) gymnasiums;
- (l) lecture halls;
- (m) lodge rooms;
- (n) motion picture theaters;
- (o) museums;
- (p) night clubs;
- (q) opera houses;
- (r) passenger stations;
- (s) pool rooms;
- (t) recreation areas;
- (u) restaurants;
- (v) skating rinks;
- (w) television studios;
- (x) theaters; and
- (y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business or the rendering or receiving of professional services, including among others:

- (a) banks;
- (b) barber shops;
- (c) beauty parlors;
- (d) office buildings;
- (e) radio stations;
- (f) telephone exchanges; and
- (g) television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or receiving educational instruction, including among others:

- (a) academies;
- (b) colleges;
- (c) libraries;
- (d) schools; and
- (e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:

- (a) assembly plants;
- (b) creameries;
- (c) electric substations;
- (d) factories;
- (e) ice plants;
- (f) laboratories;
- (g) laundries;
- (h) manufacturing plants;
- (i) mills;
- (j) power plants;
- (k) processing plants;
- (l) pumping stations;
- (m) repair garages;
- (n) smoke houses; and
- (o) workshops.

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

- (a) asylums;
- (b) homes for the aged;
- (c) hospitals;
- (d) houses of correction;
- (e) day care facilities;
- (f) infirmaries;
- (g) jails;
- (h) nurseries;

- (i) orphanages;
- (j) nursing homes;
- (k) penal institutions;
- (l) reformatories;
- (m) sanitariums;
- (n) long-term care facilities; and
- (o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided, and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

- (a) apartments;
- (b) clubhouses;
- (c) convents;
- (d) dormitories;
- (e) dwellings;
- (f) hotels;
- (g) motels;
- (h) multifamily houses; and
- (i) lodging houses.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977.

Amendments

The 1977 amendment added the subhead designations within each of the subsections; and made minor changes in style, punctuation and phraseology.

69-1807. Fire extinguisher requirements. No fire extinguisher or extinguishers containing any of the following liquids: Carbon tetrachloride (CCl_4); Chlorobromomethane (CH_2BrCl); Azeotropic chlormethane (CM-7); Dibromodifluoromethane (CBr_2F_2); 1, 2-Dibromo-2-chloro-1, 1, 2-trifluoroethane ($\text{CBrF}_2\text{CBrClf}$); 1, 2-Dibromo-2, 2-difluoroethane ($\text{CH}_2\text{BrCBrF}_2$); Methyl bromide (CH_3Br); Ethylene dibromide ($\text{CH}_2\text{BrCH}_2\text{Br}$); 1, 2-Dibromotetrafluoroethane ($\text{CBrF}_2\text{CBrF}_2$); Hydrogen bromide (HBr); Methylene bromide (CH_2Br_2); Bromodifluoromethane (CHBrF_2); and Dichlorodifluoromethane (CCl_2F_2), or any other toxic or poisonous vaporizing liquid, shall be kept or maintained in or upon any building without written approval by the state fire marshal or his deputy.

History: En. Sec. 7, Ch. 279, L. 1947; amd. Sec. 1, Ch. 227, L. 1959; amd. Sec. 1, Ch. 254, L. 1975.

Amendments

The 1975 amendment deleted the former first paragraph which required fire extinguishers or hoses to be kept on each floor of a building; deleted Bromochlorodifluoromethane (CBrClF_2) and Bromotrifluoromethane (CBrF_3) from the list of prohibited chemicals; substituted "without written approval by the state fire marshal" for "ninety days (90) after written notice by the state fire marshal"; and made minor changes in phraseology. For prior version, see parent volume.

69-1808. Inspection by fire chiefs, county sheriffs, or deputy fire marshals—review of plans by fire marshal—permits—notice of inadequate equipment—compliance—enforcement. (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or

private, may not be constructed or have alterations made costing \$1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing \$1,500 or more until a permit has been issued for the construction or alteration by the county commissioners. A fee of \$10 shall be paid to the county treasurer for each permit. A copy of the permit shall be furnished to the county assessor. No permit may be issued until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to the state fire marshal and approved by him. The fire marshal and county sheriffs are responsible for enforcing the provisions of this subsection.

(3) A building designed for human occupancy owned or controlled by the state may not be constructed until plans for the construction have been submitted to the state fire marshal and approved by him.

(4) The chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists shall enter into all buildings and upon all premises within their jurisdiction at least once each 6 months for the purpose of examining the premises for violations of this act. The inspection shall include but is not limited to testing fire alarms and fire extinguishers, examining fire hose, attachments, and other fire apparatus, and examining fire escapes. Copies of the inspection shall be filed in the office of the state fire marshal on forms to be provided by him.

(5) When a building is found which requires the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this act or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition, the person making the inspection or the state fire marshal shall serve a written notice upon the party whose duty it is to erect the fire escapes or maintain such fire apparatus. The notice shall specify the time within which the fire escapes shall be erected or the defective conditions remedied, which may not be more than 90 days. The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this act is entitled to reimburse himself for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or covenant thereof or grounds for any action or damage ouster.

(6) The state fire marshal has general charge and supervision of the enforcement of this act, and the officers enumerated in subsection (4) of

this section shall act under his general charge and supervision, shall assist him in giving effect to this act, and are subject to his direction and the rules adopted for the enforcement of this act.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977.

Amendments

The 1977 amendment rewrote subsection (5); and made minor changes in style, punctuation and phraseology. For prior version, see parent volume.

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE, SALE AND POSSESSION

Section

69-1923. Storage of explosives in cities.

69-1925. Transportation vehicle to bear warning signs.

69-1929. Penalty when death caused by violation of this act.

69-1931, 69-1932. [Transferred.]

69-1910, 69-1911. (2795, 2796) Repealed.

Repeal

Sections 69-1910, 69-1911 (Secs. 10, 11, Ch. 129, L. 1917; Sec. 8, Ch. 121, L. 1965),

relating to license fees and annual inspections, were repealed by Sec. 1, Ch. 352, Laws 1973.

69-1916. (2801) Repealed.

Repeal

Section 69-1916 (Sec. 16, Ch. 129, L. 1917), relating to the possession of shells

or bombs for unlawful use, was repealed by Sec. 77, Ch. 359, Laws 1977.

69-1922. (2807) Storage of explosives in mines.

Injured Employee's Remedies

Despite blasting company's violation of this section it could not be held liable under common-law action for negligence without an allegation of intentional in-

jury by the defendant by deliberate infliction of harm where otherwise the remedy is within the workmen's compensation law. *Enberg v. Anaconda Co.*, 158 M 135, 489 P 2d 1036.

69-1923. (2808) Storage of explosives in cities. No person, company, or corporation may store, deposit, or keep within 1 mile of the limits of a city, town, or village any powder, gunpowder, giant or Hercules powder, or other highly explosive substance in excess of 100 pounds or 1,000 giant caps, nor may explosives be stored, deposited, or kept in any quantity whatever within 1 mile of a city, town, or village except in a magazine constructed as provided for in 69-1907. This section does not prevent a person, company, or corporation operating a mine within 1 mile of the limits of a city, town, or village from storing powder for use in the mine in the manner prescribed in 69-1922 and 69-1907. This section does not prevent the keeping of a reasonable amount of gunpowder, not exceeding 50 pounds, in a safe place for sale.

History: En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907; re-en. Sec. 2808, R.C.M. 1921; amd. Sec. 14, Ch. 187, L. 1977.

Amendments

The 1977 amendment substituted "as

provided for in 69-1907" for "as herein-after described" at the end of the first sentence; substituted a reference to 69-1907 for a reference to 69-1924 at the end of the second sentence; and made minor changes in style, punctuation and phraseology.

69-1924. (2809) Repealed.**Repeal**

Section 69-1924 (Sec. 710, Pen. C. 1895), relating to the construction and location

of storehouses and magazines, was repealed by Sec. 39, Ch. 187, Laws 1977.

69-1925. (2810) Transportation vehicle to bear warning signs. Each vehicle in which explosives are transported, transferred, or delivered shall bear on each side a sign having the words "explosives—dangerous" in conspicuous letters not less than 2 inches in length.

History: En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907; re-en. Sec. 2810, R.C.M. 1921; amd. Sec. 15, Ch. 187, L. 1977.

tion, deleting provisions requiring magazines and storehouses where high explosives were kept to bear warning signs to that effect, and making minor changes in style and phraseology. For prior version, see parent volume.

Amendments

The 1977 amendment rewrote this sec-

69-1927. (2812) Careless use of explosives a misdemeanor.**Injured Employee's Remedies**

Plaintiff's complaint, alleging that a violation of the penal statute abrogates an employer's immunity from a common-law action where the injured employee is covered by workmen's compensation, fails

to make a claim for relief if it does not allege intentional injury in the sense of a deliberate infliction of harm by the defendant. *Enberg v. Anaconda Co.*, 158 M 135, 489 P 2d 1036.

69-1929. (2814) Penalty when death caused by violation of this act. When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported contrary to the provisions of the foregoing sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives or who may have knowingly or negligently permitted their agents, servants, or employees to so unlawfully store, keep, handle, or transport the same, are guilty of negligent homicide and, on conviction, shall be punished by imprisonment in the state prison for a period not exceeding 10 years.

History: En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907; re-en. Sec. 2814, R.C.M. 1921; amd. Sec. 56, Ch. 359, L. 1977.

Amendments

The 1977 amendment substituted "negligent homicide" near the end of the section for "manslaughter"; and made minor changes in phraseology, punctuation and style.

69-1930. (2815) Repealed.**Repeal**

Section 69-1930 (Sec. 3, p. 72, L. 1893), relating to storage of kerosene, petroleum, giant caps and coal oil within unincor-

porated towns, and to sales after dark, was repealed by Sec. 1, Ch. 352, Laws 1973.

69-1931, 69-1932. [Transferred.]**Compiler's Notes**

Section 72, Ch. 359, Laws of 1977 re-

numbered these sections as secs. 94-8-209.1 and 94-8-209.2.

CHAPTER 21—BUILDING AND MOBILE HOME CONSTRUCTION STANDARDS

Section

- 69-2105. Definitions.
- 69-2107. Applicable to public places outside municipalities—limitation of code.
- 69-2109. Duties of department.
- 69-2110. Purposes of state building code.
- 69-2111. Adoption of rules by department.
- 69-2112. Municipal building codes—applicability of state code.
- 69-2113. Permit necessary.
- 69-2114. Department's powers—variances—review.
- 69-2119. Violation of order or codes a misdemeanor.
- 69-2122. Mobile homes—rule-making power.
- 69-2123. Compliance with the department's rules.
- 69-2124. Fees.
- 69-2125. Department of administration—authority to promulgate building regulations.

69-2104. Repealed.**Repeal**

was repealed by Sec. 14, Ch. 226, Laws of 1974.

Section 69-2104 (Sec. 1, Ch. 366, L. 1969), relating to the purposes of the act,

69-2105. Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (12) of this section.

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Department" means the department of administration provided for in Title 82A, chapter 2.

(4) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(5) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(6) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(8) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(9) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver,

executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) "State building code" means the state building code provided for in section 69-2111 or any portion of the code of limited application, and any of its modifications or amendments.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension of the jurisdictional area to include: (a) all or part of the area within $4\frac{1}{2}$ miles of the corporate limits of a municipality; (b) all of any platted subdivision which is partially within $4\frac{1}{2}$ miles of the corporate limits of a municipality; and (c) all of any zoning district adopted pursuant to Title 16, chapter 41 or 47, which is partially within $4\frac{1}{2}$ miles of the corporate limits of a municipality. Distances shall be measured in a straight line in a horizontal plane.

(13) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

(14) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 69-2122.

History: En. Sec. 2, Ch. 366, L. 1969; amd. Sec. 1, Ch. 226, L. 1974; amd. Sec. 1, Ch. 244, L. 1975; amd. Sec. 1, Ch. 459, L. 1975; amd. Sec. 1, Ch. 504, L. 1977.

Amendments

The 1974 amendment substituted "this chapter" for "this act" in the first sentence; deleted a definition of "Council"; substituted "as defined by subsection (12)" in subsection (1) for "as defined by subsection (13)"; added "provided for in Title 82A, chapter 2" in subsection (3); and added the definitions of "Mobile home" and "Recreational vehicle."

Chapter 244, Laws of 1975, added subdivision (b) to the definition of "Municipal jurisdictional area."

Chapter 459, Laws of 1975, rewrote the definition of "Mobile home" which read "any dwelling unit larger than two hundred fifty-six (256) square feet in area which is either wholly or in substantial part manufactured at an off-site location and any movable or portable dwelling over thirty-two (32) feet in length and over eight (8) feet wide, constructed to be towed on its own chassis and designed

without a permanent foundation for year-round occupancy, which includes one (1) or more components that can be retracted for towing purposes and subsequently expanded for additional capacity, or of two (2) or more units separately towable but designed to be joined into one (1) integral unit, as well as a portable dwelling composed of a single unit"; and rewrote the definition of "Recreational vehicle" which formerly read "any movable or portable dwelling primarily designed as temporary living quarters for recreational, camping or travel use which either has its own motive power or is mounted on or drawn by another vehicle and which is less than thirty-two (32) feet in length."

The 1977 amendment deleted former subsection (14) which defined a "mobile home" as anything defined as a mobile home in the edition of National Fire Protection Association (NFPA) No. 501B or American National Standards Institute (ANSI) A119.1, adopted by the state in accordance with 69-2122; redesignated former subsection (15) as subsection (14); and made minor changes in style.

69-2106. Repealed.

Repeal

Section 69-2106 (Sec. 3, Ch. 366, L. 1969), relating to the state building code

council, was repealed by Sec. 14, Ch. 226, Laws of 1974.

69-2107. Applicable to public places outside municipalities—limitation of code. (1) Outside municipalities and their jurisdictional area as defined by section 69-2105, subsection (12) of this chapter, this chapter applies to "public places" as defined in section 69-2105, subsection (13).

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record. The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) and (b) * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 366, L. 1969; amd. Sec. 2, Ch. 226, L. 1974.

Amendments

The 1974 amendment substituted reference to "subsection (12)" in subsection (1) for reference to "subsection (13)"; substituted reference to "subsection (13)" in subsection (1) for reference to "subsection

(15) [14]"; substituted "this chapter" in subsection (1) for "this act"; substituted "department" for "state controller" in the first sentence of subsection (2) and for "council" in the second sentence; and deleted a former second sentence from subsection (2) which read "He shall submit the request to the council."

69-2108. Repealed.

Repeal

Section 69-2108 (Sec. 5, Ch. 366, L. 1969), relating to the state controller ad-

ministering the act, was repealed by Sec. 14, Ch. 226, Laws of 1974.

69-2109. Duties of department. The department shall administer this chapter, and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of this act and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under this chapter;

(3) and (4) * * * [Same as parent volume.]

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and co-operate with other agencies of the state, local governments, industries, and interested persons or groups.

History: En. Sec. 6, Ch. 366, L. 1969; amd. Sec. 3, Ch. 226, L. 1974.

Amendments

The 1974 amendment substituted the introductory sentence for "The state controller shall, under the guidance of the council"; substituted "this chapter" for "this act" in subdivision (2); deleted "ad-

visory committees" after "technical advisers" in subdivision (5); deleted "the council" after "co-operate with" in subdivision (6); deleted a final subdivision relating to making rules for the organization and internal management of the division; and made minor changes in phraseology.

69-2110. Purposes of state building code. The state building code shall be designed to effectuate the general purposes of this chapter and the following specific objectives and standards to:

(1) * * * [Same as parent volume.]

(2) permit to the fullest extent feasible, the use of modern technical methods, devices, and improvements which tend to reduce the cost of con-

struction consistent with reasonable requirements for the health and safety of the occupants or users of buildings; and consistent with the conservation of energy by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) * * * [Same as parent volume.]

(4) ensure that buildings constructed with public funds are accessible to, and functional for, physically handicapped persons where practicable and feasible;

(5) encourage efficiencies of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical and illumination systems which promote the efficient use of energy.

History: En. Sec. 7, Ch. 366, L. 1969; amd. Sec. 4, Ch. 226, L. 1974; amd. Sec. 1, Ch. 116, L. 1975.

The 1975 amendment added the provision at the end of subdivision (2) for cost reduction to be consistent with the conservation of energy; and added subdivisions (5) and (6).

Amendments

The 1974 amendment substituted "this chapter" for "this act" in the first sentence.

69-2111. Adoption of rules by department. (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such codes. The rules, when adopted as provided in this chapter, constitute the "state building code" and are acceptable for the buildings to which they are applicable. The department may amend or repeal such rules.

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(4) If a hearing has been held by the state fire marshal with respect to his duties contained in Title 82, chapter 12, or by the board of plumbers, the department of health and environmental sciences, the board of warm air heating, ventilation, and air conditioning, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

History: En. Sec. 8, Ch. 366, L. 1969; 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 504, L. 1977.

Compiler's Notes

Section 2, Ch. 173, Laws 1977, provides: "Energy conservation rules—when to be drafted, heard, published, and implemented. (1) The department shall draft the rules required by 69-2110 and 69-2111 relating to energy conservation by September 30, 1977.

"(2) Hearings on such rules shall be held in December of 1977 with notice as provided in the Montana Administrative Procedure Act.

"(3) Such rules shall be adopted and published by February 28, 1978, and implementation shall be initiated immediately upon publication."

This section was amended three times in 1977 by Chs. 173, 187, and 504. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1974 amendment substituted "department" for "council" throughout the section; substituted "this chapter" for "this act" in subsection (1); substituted "in accordance with the Montana Administrative Procedure Act" for "and compel the attendance of witnesses and the production of evidence" in subsection (2); deleted provisions from subsection (3) relating to publication of notice of hearings; rewrote the first sentence of subsection (4) which read: "If a hearing has been held by a state fire marshal, state plumbing board, state board of health, or state electrical board on a proposed rule relating to building and equipment standards in their respective fields, public hearing by the council is not required"; substituted "proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences" for "proposed by the state fire marshal, state plumbing board, state board of health"

in subsection (5); deleted subsection (6) which read: "Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to the provisions of this act"; deleted subsections (7) through (10) pertaining to the distribution of proposed rules and the form and certification of rules; and made minor changes in phraseology and punctuation.

Chapter 116, Laws of 1975 added "and conservation of energy" to the end of the first sentence in subsection (1); and made minor changes in phraseology.

Chapter 504, Laws of 1975 inserted "board of warm air heating, ventilation, and air conditioning" in subsections (4) and (5); and made a minor change in punctuation.

Chapter 173, Laws of 1977, deleted "by reference nationally recognized building codes in whole or in part, amend and repeal" after "The department shall adopt" at the beginning of subsection (1); inserted the second sentence to subsection (1) relating to nationally recognized building codes; added the last sentence of subsection (1) relating to the amendment or repeal of rules; and made minor changes in phraseology and punctuation.

Chapter 187, Laws of 1977, substituted "state fire marshal" near the beginning of subsections (4) and (5) for "department of justice"; and made minor changes in phraseology and punctuation.

Chapter 504, Laws of 1977, deleted subsection (5) which read: "If a rule relating to building or equipment standards is proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences, board of warm air heating, ventilation, and air conditioning, or state electrical board which conflicts with the state building code, the department shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected."

69-2112. Municipal building codes—applicability of state code. (1) The local legislative body of a municipality or county may adopt a municipal building code by ordinance to apply to the municipal or county jurisdictional area. A municipal or county building code may include only codes adopted by the department.

(2) If a municipality or county does not adopt a building code as provided in subsection (1) of this section, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(3) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.

(4) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (3).

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977.

Amendments

The 1974 amendment substituted "department" for "state building code council" and "council."

The 1977 amendment inserted "or county" after "municipality" or "municipal" throughout the section; substituted the second sentence of subsection (1) for the former second and third sentences which provided that a municipal building code should require standards equal to those of the state building code or higher stand-

ards, and should cover all general areas included in the state building code; added "and the state will enforce the code in these areas" at the end of subsection (2); substituted subsection (3) for "The department shall determine whether a municipal building code has standards equal to those of the state building code or higher standards and notify municipalities immediately if any municipal standards are below the state standards"; and substituted subsection (4) for "If a municipal code is adopted, a copy of the code and any amendments to the code shall be filed with the department."

69-2113. Permit necessary. Any person who desires to construct a building which is subject to the provisions of this chapter must apply for a permit from the appropriate authorities.

History: En. Sec. 10, Ch. 366, L. 1969; amd. Sec. 6, Ch. 226, L. 1974.

Amendments

The 1974 amendment deleted "After the

effective date of this act" from the beginning of the section; and substituted "this chapter" for "this act."

69-2114. Department's powers—variances—review. (1) The department has the power on satisfactory proof, after a public hearing, to:

(a) to (e) * * * [Same as parent volume.]

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(a) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(b) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

History: En. Sec. 11, Ch. 366, L. 1969; amd. Sec. 7, Ch. 226, L. 1974.

Amendments

The 1974 amendment substituted "department" for "council" in subsection (1) and subdivision (2)(b); substituted "Montana Administrative Procedures Act" in

the first sentence of subsection (2) for "procedure, conditions and rules as prescribed by the council"; deleted portions of subsection (2) relating to procedure for hearings and decisions of the council (see parent volume); and made minor changes in phraseology and punctuation.

69-2115. Repealed.

Repeal

Section 69-2115 (Sec. 12, Ch. 366, L.

1969), relating to judicial review, was repealed by Sec. 14, Ch. 226, Laws of 1974.

69-2116, 69-2117.

Compiler's Notes

Section 11, Ch. 226, Laws 1974, substituted "department" in these sections for

"state building code council" and "council."

69-2119. Violation of order or codes a misdemeanor. Any person, served with an order pursuant to the provisions of this chapter, who fails to comply with the order not later than thirty (30) days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: En. Sec. 16, Ch. 366, L. 1969; amd. Sec. 8, Ch. 226, L. 1974.

Amendments

The 1974 amendment substituted "this chapter" for "this act" and "department" for "state controller" in the first sentence.

69-2120, 69-2121. Repealed.

Repeal

Sections 69-2120 and 69-2121 (Sec. 17, Ch. 366, L. 1969; Sec. 1, Ch. 348, L. 1971), relating to the effect of the act on other

rules and standards, and definitions of terms, were repealed by Sec. 14, Ch. 226, Laws of 1974.

69-2122. Mobile homes—Rule-making power. The department shall make rules embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America Standards Institute (USASI), successor to the American Standards Association (ASA) and American National Standards applicable to mobile homes and recreational vehicles as defined in section 69-2105.

History: En. Sec. 2, Ch. 348, L. 1971; amd. Sec. 9, Ch. 226, L. 1974.

Amendments

The 1974 amendment deleted a first paragraph which read: "Mobile homes and recreational vehicles, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In

the sale of mobile homes and recreational vehicles, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this state to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes and recreational vehicles which are not so constructed as to provide reasonable safety and protection to their owners and users"; substituted "department" for "council" in the first sentence; and made minor changes in phraseology.

69-2123. Compliance with the department's rules. No person, firm or corporation may manufacture, sell, or offer for sale any new mobile home or recreational vehicle unless such mobile home or recreational vehicle, its components, systems and appliances have been constructed and assembled in accordance with the standards herein defined. Any mobile home or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this chapter. All mobile home or recreational vehicle units thus approved shall be acceptable as meeting the requirements of this chapter throughout the state of Montana without further inspection or fees

except for zoning, utility connections and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971; amd. Sec. 10, Ch. 226, L. 1974; amd. Sec. 2, Ch. 459, L. 1975.

Amendments

The 1974 amendment deleted "which has been constructed more than twelve (12) months after the effective date of this act" after "any mobile home or recreational ve-

hicle" in the first sentence; substituted "department" for "council" in the second sentence; and substituted "this chapter" for "this act" in the second and third sentences.

The 1975 amendment inserted "new" before "mobile home" in the first sentence; and made a minor change in punctuation.

69-2124. Fees. The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, recreational vehicles, tramways, or any other facility or structure. The department may utilize independent testing laboratories or the agencies of other states to determine if approved models of factory-built buildings or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977.

Amendments

The 1974 amendment substituted "department" for "council" in two places.

The 1977 amendment substituted the first sentence for "The department shall

establish a schedule of fees for the inspection of plans and specifications for mobile homes or recreational vehicles and for the inspection of individual units"; and substituted "approved models of factory-built buildings" in the second sentence for "approved models of mobile homes."

69-2125. Department of administration—authority to promulgate building regulations. No state agency except the department of administration may promulgate building regulations as defined in 69-2105, except the state fire marshal may promulgate regulations relating to use of buildings and installation of equipment. The state fire marshal shall review building plans and regulations for conformity with rules promulgated by the department of administration.

History: En. 69-2125 by Sec. 13, Ch. 504, L. 1977.

Title of Act

An act providing for the consolidation of administrative functions regarding building codes; providing for promulgation of codes by the department of administration; amending sections 66-2416, 66-2417, 66-2427, 66-2802, 66-2805.1, 69-2105, 69-2111, 69-2112, 69-2124, 75-8206, 75-8207, and 82A-1607, R.C.M. 1947; and repealing sections 69-4117 and 69-5507, R.C.M. 1947.

Saving Clause

Section 14 of Ch. 504, Laws 1977 read "This act does not affect rights and duties

that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 15 of Ch. 504, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 504, Laws 1977 read "Section 69-4117 and 69-5507 are repealed."

CHAPTER 22—BLOOD AND BLOOD PRODUCTS

Section

- 69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals.
 69-2204. Immunity of blood banks.
 69-2205. Labeling of containers by blood banks required.

69-2203. Medical use of blood and blood products declared service and not sale—immunity of physicians and hospitals. The furnishing of, and the injecting or transfusing into the human body, of whole blood, plasma, blood products, and blood derivatives, by a hospital, long-term care facility or doctor, of any such substances, obtained by such hospital, long-term care facility or doctor so furnishing, injecting or transfusing the same, from any source or sources which said hospital, long-term care facility or doctor is not directly or indirectly financially interested in, or has any control over, is hereby declared not to be a sale of such whole blood, plasma, blood products, or blood derivatives for any purpose or purposes, and no physician, long-term care facility or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital, long-term care facility or doctor for injuries resulting from the furnishing or performing of such services.

History: En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975.

Title of Act

An act establishing that the use of certain whole blood, plasma, blood products, and blood derivatives by physicians and hospitals for the purpose of injecting or transfusing any of them into the human body is a service and not a sale; providing that blood banks shall not be liable for such products disbursed by them in

the absence of negligence if such products have been tested by certain testing procedures and found by such tests to not be dangerous to the health of a prospective recipient, and requiring the labeling by such blood banks of such products sold.

Amendments

The 1975 amendment inserted "long-term care facility" after "hospital" and "physician" throughout the section.

69-2204. Immunity of blood banks. No blood bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting or transfusing of whole blood, plasma, blood products, or blood derivatives supplied by any such blood bank to any hospital or physician if such blood products so furnished have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks and by such test is not found to be dangerous to the health of the recipient of such blood products.

History: En. Sec. 2, Ch. 284, L. 1971.

69-2205. Labeling of containers by blood banks required. That each container or package containing any whole blood, plasma, blood products, and blood derivatives, sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein contained was tested as required in section 2 [69-2204] hereof, giving the date of the test and such information as is necessary to designate the type of test made.

History: En. Sec. 3, Ch. 284, L. 1971.

CHAPTER 23—ANATOMICAL GIFT ACT

69-2315. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the parent volume, the following states have enacted the "Uniform Anatomical Gift Act": Alabama, Alaska, Arkansas, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Okla-

homa, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

The following state has enacted provisions which are substantially similar to the Uniform Anatomical Gift Act: Louisiana.

CHAPTER 27—FIREWORKS REGULATION

Section

69-2701. Fireworks prohibited and defined for the purposes of this chapter.

69-2702. Supervised public display of fireworks.

69-2701. Fireworks prohibited and defined for the purposes of this chapter. (1) It is unlawful to possess, sell, transport, or use any fireworks within the state of Montana except as provided in this chapter.

(2) The term "fireworks" means any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes sky rockets, roman candles, daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. This chapter does not apply to toy paper caps containing less than $\frac{1}{4}$ of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

(3) It is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state of Montana the permissible fireworks enumerated in subsection (4) of this section.

(4) Permissible fireworks, excluding sky rockets, roman candles, daygo bombs, firecrackers, and bottle rockets, include and are limited to the following:

(a) helicopter type spinners, the total pyrotechnic composition not to exceed 20 grams each in weight;

(b) cylindrical fountains, the total pyrotechnic composition not to exceed 25 grams each in weight and the inside tube diameter not to exceed three-fourths of an inch;

(c) cone fountains, the total pyrotechnic composition not to exceed 50 grams each in weight;

(d) wheels, the total pyrotechnic composition not to exceed 60 grams in weight for each driver unit (but there may be any number of drivers on any one wheel) and the inside bore of driver tubes not to be over one-half of an inch;

(e) illuminating torches and colored fire in any form, the total pyrotechnic composition not to exceed 100 grams each in weight;

(f) sparklers and dipped sticks, the total pyrotechnic composition not to exceed 100 grams each in weight (pyrotechnic composition containing any chlorate not to exceed 5 grams); and

(g) whistles without report, the total pyrotechnic composition not to exceed 40 grams each in weight.

(5) It is unlawful for an individual under the age of 18 to possess for sale, sell, or offer for sale within the state of Montana permissive fireworks enumerated in subsection (4) of this section.

(6) It is unlawful for a wholesaler to sell or offer for sale within the state of Montana fireworks except as enumerated in subsection (4) of this section. It is lawful for a wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(7) No person, firm, or corporation may offer fireworks of any kind for sale at retail before June 24 and after July 5.

(8) It is unlawful for an individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics within the exterior boundaries of a state forest, state park, or state recreation area.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977.

Amendments

The 1971 amendment reduced the age specified in the paragraph following the numbered subdivisions in subsection c from twenty-one to eighteen years, and made minor changes in style.

The 1974 amendment added "firecrackers and bottle rockets" at the end of the second paragraph of subdivision c; and deleted former subsection (7) which read: "Firecrackers with soft casings, the ex-

ternal dimensions of which do not exceed one and one-half ($1\frac{1}{2}$) inches in length or one-quarter ($\frac{1}{4}$) inch in diameter, total pyrotechnic composition not to exceed two (2) grains each in weight;" and redesignated former subsection (8) as (7).

The 1977 amendment redesignated former subsections (a) through (c) as subsections (1) through (3); inserted the designations of subsections (4) through (6); substituted letters for numbers in the subdivision designations under subsection (4); redesignated former subsections (d) and (e) as subsections (7) and (8); and made minor changes in style, punctuation and phraseology.

69-2702. Supervised public display of fireworks. The state fire marshal and the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Each display shall be handled by a competent operator, who must be approved by the state fire marshal or the governing body of the municipality in which the display is to be held, and be located, discharged, or fired as, in the opinion of the chief of the fire department or other officer designated by the governing body of the municipality after proper inspection, not to be hazardous to persons or property. Application for permits shall be made in writing at least 15 days prior to the date of the display. After the privilege has been granted,

sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only. No permit granted under this section is transferable. The term "municipalities" includes cities and incorporated towns.

History: En. Sec. 3, Ch. 143, L. 1947; amd. Sec. 2, Ch. 273, L. 1959; amd. Sec. 18, Ch. 187, L. 1977.

Amendments

The 1977 amendment deleted "Except as hereinafter provided, it shall be unlawful for any person, firm, copartnership, association or corporation to possess, offer for sale, expose for sale, sell, or use or

explode any fireworks" from the beginning of the section; in the first sentence deleted "or township" after "a city, town" and "or regulations" after "rules"; in the second sentence, deleted "of such a character, and" before "located, discharged, or fired"; deleted "or townships" at the end of the final sentence; and made minor changes in style, punctuation and phraseology.

CHAPTER 33—GEOPHYSICAL EXPLORATION

Section

69-3303. Notice of intention to explore.

69-3304. Surety bond required—amount—filing—proper plugging and restoration of surface—certificate of filing.

69-3305. Exploration permit.

69-3305.1. Additional requirements.

69-3308. Failure to comply with act—misdemeanor.

69-3303. Notice of intention to explore. A person, firm, or corporation desiring to engage in geophysical exploration within the state of Montana shall file a notice of intention to engage in the exploration with the county clerk and recorder in each county in which exploration is to be carried on or engaged in. The notice shall be filed prior to the actual commencement of the exploration.

History: En. Sec. 3, Ch. 235, L. 1955; amd. Sec. 34, Ch. 39, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and punctuation.

69-3304. Surety bond required—amount—filing—proper plugging and restoration of surface—certificate of filing. A person, firm or corporation desiring to engage in such geophysical exploration, shall also file with the secretary of state a good and sufficient surety bond in the amount of ten thousand dollars (\$10,000.00) for a single such geophysical crew or a blanket surety bond in the amount of twenty-five thousand dollars (\$25,000.00) for all such geophysical crews operating within the state for such person, firm or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such geophysical exploration. Unless otherwise agreed as between the owner of the surface and such person, firm, or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all "shot holes" in such a manner as shall be specified by the board of oil and gas conservation to contain any water within its native strata by replacing all drill cuttings and filling the hole with bentonite mud or cement as required to contain the water and capping the same with an impervious material at least 1 foot in depth, the top of which shall be 4 feet below the surface of the land. The portion of the hole above the cap shall be filled with native material. The person, firm, or corporation shall also restore the surface around the same as near

as practicable to its original condition. The bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional 5 years thereafter; provided, however, that the aggregate liability of the surety shall, in no event, exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, firm or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm or corporation.

History: En. Sec. 4, Ch. 235, L. 1955; amd. Sec. 1, Ch. 175, L. 1961; amd. Sec. 1, Ch. 272, L. 1977.

Amendments

The 1977 amendment added "in such a manner as shall be specified by the board of oil and gas conservation * * * the top of which shall be 4 feet below the surface of the land" to the end of the second sentence; inserted the third sentence; inserted "The person, firm, or corporation shall also" at the beginning of the fourth sentence; increased the additional time for bond to remain on file from 2 years to 5 years; and made minor changes in phraseology and style.

Sealing of Shot Holes

Sealing "shot" holes by pouring excess cuttings down them and plugging the orifice with an aluminum plug by forcing it down into the hole so that the top of the plug was below plow depth, was in compliance with this section when the holes were only four and one-half inches in diameter in view of expert testimony that seismographic holes tend to slough and cave, releasing lateral support from materials around the hole and that the pressure from the weight of the earth above has a tendency to force the material toward the center, sealing the hole. Haynie v. Northern Pacific Ry. Co., 158 M 247, 490 P 2d 715.

69-3305. Exploration permit. (1) Upon compliance with the provisions herein contained, namely the filing of a notice of intention to engage in the exploration and a certificate (or photostatic copy thereof) from the secretary of state certifying the name and address of the resident agent for service of process for the person, firm, or corporation desiring to engage in the exploration and certifying that the required surety bond has been filed with the secretary of state, the county clerk and recorder shall issue to the person, firm, or corporation a "geophysical exploration permit".

(2) The permit shall show:

(a) the name of the person, firm, or corporation and principal place of business;

(b) if a firm or corporation, the names and addresses of its officers;

(c) the name and address of the resident agent for service of process for the person, firm, or corporation;

(d) that a notice of intention to engage in geophysical exploration has been duly filed; and

(e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit shall be signed by the county clerk and recorder or his deputy and bear the official county seal. The permit shall be valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit shall be \$5 per calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county so issuing. Such funds as are realized shall be applied toward payment of the cost of printing the permits, which shall be printed at the county seat, and excesses shall go into the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires the permit and qualifies for its issuance, typewritten or other form of reproduction of the permit may be used, the fee of \$5 nevertheless shall be paid for its issuance, and this fee shall be disposed of in the same manner.

(6) The permit or a photostatic copy thereof shall be carried by the person or by the agent of the firm or corporation at all times during the period of the geophysical exploration and shall be exhibited upon demand of any county or state official.

History: En. Sec. 5, Ch. 235, L. 1955; **Amendments**
amd. Sec. 35, Ch. 39, L. 1977.

The 1977 amendment made minor changes in phraseology, punctuation and style.

69-3305.1. Additional requirements. (1) The county clerk and recorder of the county in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the board of oil and gas conservation.

(2) The board shall notify the county clerk and recorder of the county if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state.

(3) If the board of oil and gas conservation determines that a person, firm, or corporation has violated any provisions of this act, the board shall take necessary action to assure compliance.

(4) Before commencing geophysical activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity and upon request the following information shall also be furnished:

(a) the name and permanent address of the geophysical exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm's;

(b) evidence of a valid permit to engage in geophysical exploration;

(c) name and address of the company insuring the geophysical firm;

(d) the number of the bond required in [69-3304];

(e) a description of the surface areas where the planned geophysical activity will take place;

(f) anticipated need, if any, to obtain water from the surface user during planned geophysical activity.

History: En. 69-3305.1 by Sec. 2, Ch. 272, L. 1977.

enforcement by the board of oil and gas conservation; providing for information to be given to the surface user; establishing additional penalties for failure to comply with those requirements; amending sections 69-3304 and 69-3308, R.C.M. 1947.

Title of Act

An act to extend and further describe the requirements for plugging and reclaiming "shot holes"; establishing additional filing requirements; providing for

69-3308. Failure to comply with act—misdemeanor. A failure to comply with the terms of this act shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both. The geophysical permit of any person, firm, or corporation

convicted of a violation of the plugging requirements of this act shall be revoked and may not be renewed for a period of 2 years after conviction.

History: En. Sec. 8, Ch. 235, L. 1955; Amendments

amd. Sec. 3, Ch. 272, L. 1977. The 1977 amendment added the second sentence.

CHAPTER 34—SANITARIANS

Section

- 69-3410. Definitions.
- 69-3411. Sanitarians—must be licensed.
- 69-3412. Board of sanitarians—creation—members.
- 69-3413. Terms of members.
- 69-3414. Compensation of members.
- 69-3415. Application for license—procedure—examination.
- 69-3416. License fees.
- 69-3417. Fees—to earmarked revenue fund.
- 69-3418. Adoption of rules—suspension of license.
- 69-3419. Licensing of other sanitarians.
- 69-3420. Penalty.
- 69-3421. Prior registration as sanitarian still valid.
- 69-3422. Sanitarian practicing before act—how licensed.
- 69-3423. Board of health and environmental sciences—rules and orders remain in effect.

69-3401 to 69-3407. Repealed.

Repeal

Sections 69-3401 to 69-3407 (Secs. 1 to 7, Ch. 174, L. 1959; Sec. 119, Ch. 147, L. 1963; Secs. 1 to 6, Ch. 271, L. 1971; Secs. 8 to 10, 107, Ch. 349, L. 1974), relating

to definitions, administration, examinations and fees, revocation or suspension, and reciprocity, were repealed by Sec. 15, Ch. 314, Laws of 1974.

69-3408, 69-3409. Repealed.

Repeal

Sections 69-3408 and 69-3409 (Secs. 8, 9, Ch. 174, L. 1959; Secs. 7, 8, Ch. 271, L. 1971), relating to appeals and service of

process, were repealed by Sec. 15, Ch. 314, Laws of 1974; Sec. 113, Ch. 349, Laws of 1974.

69-3410. Definitions. Unless the context requires otherwise, as used in this act:

(1) "Board" means the board of sanitarians provided for in section 3 [69-3412].

(2) "Department" means the department of professional and occupational licensing provided for in Title 82A, chapter 16.

(3) "Registered sanitarian" means a sanitarian licensed under this act.

(4) "Sanitarian," within the meaning and intent of this act, shall mean a person who, by reason of his special knowledge of the physical, biological and chemical sciences, and the principles and methods of public health, acquired by professional education and practical experience through inspectional, educational and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means planning, inspectional, educational or enforcement duties in the field of environmental sanitation.

(6) Persons exempt from the requirements of this act, unless practicing the profession of sanitarian are:

- (a) any person teaching, lecturing or engaging in research in environmental sanitation but only in so far as such activities are performed as part of an academic position in a college or university;
- (b) any person who is a sanitary engineer, public health engineer, registered professional engineer, or engineer in training;
- (c) any public health officer employed pursuant to section 69-4509, R. C. M. 1947, and
- (d) any person employed by a federal governmental agency but only at such times as the person is carrying out the functions of his employment.

History: En. 69-3410 by Sec. 1, Ch. 314,
L. 1974.

69-3411. Sanitarians—must be licensed. A person may not practice the profession of a sanitarian or hold himself out to be a sanitarian unless he is licensed under this act.

History: En. 69-3411 by Sec. 2, Ch. 314,
L. 1974.

69-3412. Board of sanitarians—creation—members. (1) There is a board of sanitarians.

(2) The board shall consist of three (3) members appointed by the governor. Each member shall be a resident of this state and a registered sanitarian. Each member shall have a minimum of three (3) years of experience practicing as a sanitarian in the state of Montana.

History: En. 69-3412 by Sec. 3, Ch. 314,
L. 1974.

69-3413. Terms of members. Members of the first board shall serve for one (1), two (2), or three (3) years as designated by the governor. After initial appointments, appointed members shall serve for three (3) year terms. One (1) term shall expire on July 1 of each year.

History: En. 69-3413 by Sec. 4, Ch. 314,
L. 1974.

69-3414. Compensation of members. (1) Members of the board shall receive compensation of \$25 a day plus travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, while engaged in business of the board.

(2) The board shall appoint one of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four times a year.

History: En. 69-3414 by Sec. 5, Ch. 314,
L. 1974; amd. Sec. 16, Ch. 453, L. 1977.

Amendments

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-

539, and 59-801, as amended" for "actual and necessary expenses and mileage as provided in section 59-801" in subsection (1); and made minor changes in phraseology, punctuation and style.

69-3415. Application for license—procedure—examination. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must meet minimum standards set by the board and must pass an examination given at a time and place set by the board, but not to exceed one (1) year past the date of issuance of the probationary certificate described in the subsection (3) below.

(3) Upon application for registration and payment of the registration fee, a probationary certificate shall be issued.

(4) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee. Holders of current certificates shall be entitled to append to their name the initials "R.S."

History: En. 69-3415 by Sec. 6, Ch. 314,
L. 1974.

69-3416. License fees. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board, not to exceed \$10.

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314,
L. 1974; amd. Sec. 12, Ch. 533, L. 1977.

Amendments

The 1977 amendment substituted the provision for the board to set the fee in subsection (1) for a flat fee of \$35; and made a minor change in style.

69-3417. Fees—to earmarked revenue fund. All fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board subject to section 82A-1603(6).

History: En. 69-3417 by Sec. 8, Ch. 314,
L. 1974.

69-3418. Adoption of rules—suspension of license. (1) The board may adopt rules consistent with this act for its administration.

(2) The board may suspend or revoke a license for the following reasons:

- (a) unprofessional conduct;
- (b) fraud and deceit in obtaining a license;
- (c) gross negligence, incompetency or misconduct in the practice as a sanitarian; or
- (d) on the conviction of a crime involving moral turpitude.

(3) The board's rule making and hearing functions shall be in accordance with the Montana Administrative Procedure Act.

History: En. 69-3418 by Sec. 9, Ch. 314,
L. 1974.

69-3419. Licensing of other sanitarians. The department shall issue a license without examination to a person who applies to the department,

pays a fee of thirty-five dollars (\$35) and submits satisfactory proof to the board that:

- (1) he is of good moral character; and
- (2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state.

History: En. 69-3419 by Sec. 10, Ch. 314,
L. 1974.

69-3420. Penalty. A person who offers his services as a sanitarian, or uses, assumes, or advertises in any way, any title, or description tending to convey the impression that he is a sanitarian, who does not hold the license specified by this act is guilty of a misdemeanor and is punishable by a fine not to exceed five hundred dollars (\$500), or imprisonment for not longer than six (6) months, or both.

History: En. 69-3420 by Sec. 11, Ch. 314,
L. 1974.

69-3421. Prior registration as sanitarian still valid. All persons previously registered under sections 69-3401 through 69-3409 are registered sanitarians for purposes of this act.

History: En. 69-3421 by Sec. 12, Ch. 314,
L. 1974.

69-3422. Sanitarian practicing before act—how licensed. All persons having practiced as a sanitarian defined by section 1(5) [69-3410(5)] of this act for one (1) year prior to the effective date of this act may be registered as sanitarians upon making application and payment of the required fee.

History: En. 69-3422 by Sec. 13, Ch. 314,
L. 1974.

69-3423. Board of health and environmental sciences—rules and orders remain in effect. All rules and orders adopted by the board of health and environmental sciences under section 69-3402 remain in effect until amended or repealed by the board of sanitarians.

History: En. 69-3423 by Sec. 14, Ch. 314, Repealing Clause
L. 1974. Section 15 of Ch. 314, Laws 1974 read
"Sections 69-3401, 69-3402, 69-3403, 69-3404, 69-3405, 69-3406, 69-3407, 69-3408, and 69-3409 are repealed."

Compiler's Notes

Section 69-3402 referred to in this section was repealed by Sec. 15, Ch. 314, Laws of 1974.

CHAPTER 35—MOTORBOAT AND VESSEL REGULATION

Section

- 69-3502. Definitions.
69-3503. Operation of unnumbered motorboats prohibited—display of decals.
69-3504. Identification number.
69-3504.1. License decals to be displayed.
69-3505. Equipment.
69-3506. Exemption from numbering provisions of this act.
69-3507. Boat liveries.
69-3508. Prohibited operation and mooring—enforcement.

- 69-3508.1. Discharge of waste from vessel prohibited.
- 69-3510. Restricted areas.
- 69-3512. Collisions, accidents, and casualties.
- 69-3513. Transmittal of information.
- 69-3514. Water skis and surfboards.
- 69-3516. Filing of rules.
- 69-3516.1. Education program.
- 69-3517. Enforcement of act.
- 69-3518. Penalty.

69-3502. Definitions. As used in this act, unless the context clearly requires a different meaning the following definitions apply:

(1) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(2) "Motorboat" means any vessel propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(3) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Waters of this state" means any waters within the territorial limits of this state.

(5) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) "Department" means the department of fish and game of the state of Montana.

(8) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the registrar of motor vehicles to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(9) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(10) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(11) "Passenger" means every person carried on board a vessel other than:

- (a) the owner or his representative;
- (b) the operator;
- (c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(14) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

History: En. Sec. 2, Ch. 285, L. 1959; amd. Sec. 1, Ch. 230, L. 1963; amd. Sec. 44, Ch. 391, L. 1973; amd. Sec. 1, Ch. 514, L. 1973; amd. Sec. 5, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

Chapter 391, Laws of 1973, deleted "except for section 69-3504, in which section the word 'board' shall mean the board of equalization of the state of Montana" from the end of subdivision (7).

Chapter 514, Laws of 1973 abolished the distinction in subsection (1) between the definitions of "vessel" for the purposes of registration and for purposes of safety regulations; deleted from subsection (1) a definition for purposes of registration by incorporation of section 3 of Public Law 85-911; made the phrase "unless otherwise defined by the fish and game commission

of the state of Montana" applicable for all purposes in subsection (1); inserted the references to motors and engines and the phrase "including boats temporarily equipped with detachable motors or engines" in subsection (2); substituted "U. S. coast guard" for "bureau of customs" near the end of subsection (2); added subsections (8) through (14); and made minor changes in style and phraseology.

The 1977 amendment substituted "commission" for "fish and game commission of the state of Montana" in subdivision (1); substituted "commission" for "board" in subdivision (7); substituted "county treasurer" for "board of equalization" in subdivisions (8) and (10); inserted "or by the registrar of motor vehicles to dealers or manufacturers" in subdivision (8); and made minor changes in phraseology and punctuation.

69-3503. Operation of unnumbered motorboats prohibited—display of decals. (1) Every motorboat on the waters of this state propelled by a motor or engine of any description shall be properly numbered and display valid license decals. No person may operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this act, in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless:

(a) the certificate of number awarded to the motorboat is in full force and effect; and

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

(2) Any person who operates a motorboat on the waters of this state without displaying the appropriate numbers and license decals as required by this section is punishable by a fine not to exceed \$10. However, the arresting officer may issue a courtesy citation in lieu of the penalty provided for in this subsection.

History: En. Sec. 3, Ch. 285, L. 1959; Ch. 514, L. 1973; amd. Sec. 1, Ch. 306, L. amd. Sec. 1, Ch. 348, L. 1969; amd. Sec. 2, 1975; amd. Sec. 6, Ch. 124, L. 1977.

Amendments

The 1973 amendment deleted "or vessel" following "motorboat" throughout the section; substituted "motor or engine of any description" for "machinery" in the first sentence; inserted "properly" near the end of the first sentence; and inserted references to display of license decals in the first and second sentences.

The 1975 amendment designated the

former section as subsection (1); deleted "of more than eight (8) horsepower" after "engine of any description" in the first sentence of subsection (1); and added subsection (2).

The 1977 amendment redesignated former clauses (1) and (2) of subsection (1) as subdivisions (1)(a) and (1)(b); and made minor changes in phraseology, punctuation and style.

69-3504. Identification number. (1) The owner of each motorboat requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat is owned or taxable on forms prepared and furnished by the registrar of motor vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of \$1. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the registrar of motor vehicles, stating the number awarded to the motorboat and the name and address of the owner. The number awarded must be painted on or attached to each outboard side of the forward half of the motorboat or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat. The number awarded shall read from left to right, be in Arabic numerals, in block characters of good proportion at least 3 inches tall excluding border or trim, of a color that contrasts with the color of the background, and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices, other than those used in connection with the identifying number issued, may be placed in the proximity of the identifying number. No numerals, letters, or devices which might interfere with the ready identification of the motorboat by its identifying number may be carried as to interfere with the motorboat's identification. The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat whenever the motorboat is on waters of this state. Boat liveries are not required to have the certificate of number on board each motorboat, but a rental agreement must be carried on board livery motorboats in place of the certificate of number.

(2) Before filing the application with the county treasurer, the applicant shall submit it to the county assessor, who shall enter on the application, in a space to be provided for that purpose, the market value and taxable value of the motorboat for the year for which the application for registration is made.

(3) The applicant, upon the filing of the application, shall pay to the county treasurer the registration fee and the personal property taxes assessed against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.

(4) A dealer or manufacturer may apply directly to the registrar of motor vehicles for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer. The application for a dealer's or manufacturer's identifying number shall include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business. An application for dealer's or manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, \$5;

(b) for each additional certificate of number and set of license decals applied for in any application, \$2.

(5) The registrar of motor vehicles shall issue certificates of number for the identifying numbers awarded to a dealer or manufacturer in the same manner as provided in 69-3504(1), as amended, except that no boat shall be described in the certificate and each certificate shall state that the identifying number has been awarded to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued. A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 69-3504(1), as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only. No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer. No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (4) of this section.

(6) Should the ownership of a motorboat change, a new application form with fee shall be filed within a reasonable time with the county treasurer and a new certificate of number awarded in the same manner as provided for in an original award of number.

(7) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this act by the registrar of motor vehicles shall be in conformity.

(8) Every certificate of number and the license decals awarded under this act shall continue in effect for a period not to exceed 1 year unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number and license decals shall show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(9) Certificates of number shall expire on April 30 of each year and may not be in effect unless renewed under this act.

(10) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat does not terminate the certificate of number.

(11) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The registrar of motor vehicles may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(12) No number other than the number and license decal awarded to a motorboat or granted reciprocity under this act shall be painted, attached, or otherwise displayed on either side of the forward half of the motorboat.

(13) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of 69-3501 through 69-3518, as amended.

(14) An owner of a motorboat must within a reasonable time notify the registrar of motor vehicles, giving the motorboat's identifying number and the owner's name when that motorboat becomes documented as a vessel of the United States or is transferred, lost, destroyed, abandoned, or frauded, or within 60 days after change of state of principal use.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969; amd. Sec. 45, Ch. 391, L. 1973; amd. Sec. 51, Ch. 511, L. 1973; amd. Sec. 3, Ch. 514, L. 1973; amd. Sec. 1, Ch. 52, L. 1974; amd. Sec. 7, Ch. 124, L. 1977; amd. Sec. 44, Ch. 566, L. 1977.

enforcement and public safety" for "registrar of motor vehicles of the state" in the second sentence of subsection (g); and made minor changes in style, phraseology and punctuation.

Chapter 514, Laws of 1973, deleted "or vessel" following "motorboat" throughout the section; deleted "accompanied by a certificate of tax of personal property showing payment of tax on the motorboat or vessel for the current year" after "application for number" in the first sentence of subsection (a); inserted the third sentence in subsection (a); substituted "each outboard side of the forward half" in the fifth sentence of subsection (a) for "each side of the bow"; inserted the latter part of the fifth sentence of subsection (a), beginning "or if there are no such sides"; substituted the sixth and seventh sentences of subsection (a) for "in such manner as may be prescribed by rules and regulations of the board, in order that it may be clearly visible"; substituted the eighth sentence of subsection (a) for a

Compiler's Notes

This section was amended twice in 1977, once by Ch. 124 and once by Ch. 566. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "state department of revenue" for "board" throughout the section.

Chapter 511, Laws of 1973, substituted "department of revenue" for "board" near the end of the first sentence in subsection (a); substituted "department of law

sentence reading "The number shall be maintained in legible condition"; inserted "to federal, state or local law enforcement officers" in the final sentence of subsection (a); substituted "at all reasonable times" for "at all times" in the final sentence of subsection (a); substituted "is on waters of this state" in the final sentence of subsection (a) for "is in operation"; added to the end of subsection (a) the exceptions relating to boat liveryes; completely rewrote subsection (b), for previous text of which see parent volume; reduced the reciprocity period referred to in the first sentence of subsection (c) from 90 to 60 days; deleted "except that no additional or substitute number shall be issued" from the end of subsection (c); inserted "within a reasonable time" in subsection (d); inserted "board or" before "registrar" near the end of subsection (g); inserted references to license decals in subsections (h) and (l); deleted "and shall be renewed annually" before "unless sooner terminated" in the first sentence of subsection (h); substituted "Certificates of number due shall expire on April 30 of each calendar year" at the beginning of subsection (i) for "The board shall fix a day and month of the year on which certificates of number due to expire during the calendar year shall lapse"; inserted references to loss, theft and recovery in subsection (j); substituted "forward half" for "bow" near the end of subsection (l); added subsection (n); and made minor changes in phraseology.

The 1974 amendment substituted "in the office of the county treasurer wherein the motorboat or vessel is owned or taxable, on forms prepared and furnished by the registrar of motor vehicles" at the end of the first sentence of subdivision (a) for "with the state department of revenue or its designated representative, on forms approved by the state department of revenue"; substituted "the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the registrar of motor vehicles" near the beginning of the fourth sentence of subdivision (a) for "and certificate hereinabove referred to, the state department of revenue shall enter the same upon the records of its office and"; inserted subdivisions (b) and (c) and redesignated subsequent subdivisions accordingly; substituted "registrar of motor vehicles" for "board" in subdivisions (d), (g) and (n); substituted "registrar of motor vehicles" for "state department of revenue" in subdivision (a) and in the second sentence

of subdivision (k); substituted "county treasurer" for "state department of revenue" in two places in subdivision (a), in subdivisions (f), (j) and in the first sentence of subdivision (k); deleted "provided further that the number assigned may be determined by the state department of revenue" from the end of subdivision (f) (formerly subdivision (d)); deleted former subdivisions (f) and (g) providing, in substance, for the delegation of authority by the state department of revenue, the keeping of records, and the submission of copies to law enforcement authorities; and made minor changes in style, punctuation, and phraseology.

Chapter 124, Laws of 1977, substituted numbers for lettered subsection designations; deleted "or vessel" before "is owned or taxable" in the first sentence of subsection (l); deleted "for certificate of registration" after "contained in the application" in the third sentence of subsection (l); deleted a former subsection (e) which read "The owner of any motorboat already covered by a number in full force and effect, which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state, shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty (60) day reciprocity provided for in section 69-3506 (1) of this act. Such recordation shall be in the manner and pursuant to the procedure required for the award of number under subsection (a) of this section"; and made minor changes in phraseology, punctuation and style.

Chapter 566, Laws of 1977, substituted numbers for lettered subsection designations; substituted "market value and taxable value" near the end of subsection (2) for "full and true and assessed valuation"; deleted the introductory phrase of former subsection (d) which read "The numbering requirements of this act shall apply to motorboats operated by dealers, manufacturers or their employees as follows"; designated former subdivisions (d) (1) through (d) (3) as subsection (4); designated former subdivisions (d) (4) through (d) (7) as subsection (5); added "or manufacturer" at the end of the second sentence of subsection (4); rewrote former subsection (i) which read "Certificate of number due shall expire on April 30 of each calendar year and shall no longer be in effect unless renewed under this act"; and made minor changes in phraseology, punctuation and style.

69-3504.1. License decals to be displayed. (1) Every Montana boat numbered in accordance with the provisions of section 69-3504 shall be required to display license decals. For this purpose the county treasurer,

upon receipt of a certificate of tax of personal property showing payment of tax on the motorboat for the current year, shall issue a pair of decals prepared and furnished by the registrar of motor vehicles with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the registrar of motor vehicles, and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of April 30 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner:

One valid license decal on each side of the forward half three (3) inches aft of the identifying numbers.

History: En. Sec. 3, Ch. 348, L. 1969; amd. Sec. 46, Ch. 391, L. 1973; amd. Sec. 4, Ch. 514, L. 1973; amd. Sec. 2, Ch. 52, L. 1974.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 514. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsections (1) and (2).

Chapter 514, Laws of 1973, inserted "license" before "decal" throughout the section; deleted "thereon as visual proof the boat is currently registered" from the end

of the first sentence in subsection (1); inserted "upon receipt by said board of a certificate of tax of personal property showing payment of tax on the motorboat for the current year" in the second sentence of subsection (1); added the second and third sentences to subsection (2); and completely rewrote subsection (3), for previous text of which see parent volume.

The 1974 amendment substituted "county treasurer" for "state department of revenue" in the second sentence of subdivision (1); inserted "prepared and furnished by the registrar of motor vehicles" after "decals" near the end of subdivision (1); substituted "registrar of motor vehicles" near the beginning of subdivision (2) for "state department of revenue"; deleted "The style and design shall be prescribed by the board" from the end of subdivision (2); and made a minor change in phraseology.

69-3505. Equipment. (1) Every motorboat or vessel shall have aboard:

(a) one United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided that any person who has not reached his 12th birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under 26 feet in length while such motorboat or vessel is in motion;

(b) if carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if the motorboat or vessel is not an entirely open one, an efficient natural or mechanical ventilation system prescribed by the department which shall be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) United States coast guard approved hand portable fire extinguishers, the number of which is to be determined by the department, or a United States coast guard approved fixed fire extinguishing system, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels shall display lights as prescribed by the department.

(4) The department may designate waters where and the time of year on these waters when all persons aboard a motorboat or vessel must wear approved life preservers at all times.

(5) Vessels, including houseboats and floating cabins, equipped with a galley or toilet shall have a wastewater holding system sealed to prevent the discharge of water carried waste products, whether treated or untreated, into the surrounding waters.

(6) The department may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(7) A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965; amd. Sec. 52, Ch. 511, L. 1973; amd. Sec. 5, Ch. 514, L. 1973; amd. Sec. 1, Ch. 305, L. 1975; amd. Sec. 8, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

Chapter 511, Laws of 1973, substituted "under the age of thirteen (13) years" in subdivision (1) (a) for "twelve (12) years of age or younger"; redesignated former subdivisions (1) (e), (1) (f), (1) (g) and (2) as (2), (3), (4) and (5) respectively; substituted "board of health and environmental sciences" for "state board of health" at the end of the first paragraph of subsection (5); and made minor changes in phraseology and style.

Chapter 514, Laws of 1973, inserted "motorboat or" in the preliminary clause of subsection (1); substituted "United States coast guard approved personal flotation device" near the beginning of subdivision (1) (a) for "life preserver, buoyant vest, ring-buoy or buoyant cushion of the type approved by the commandant of the United States coast guard"; substituted "who has not reached his twelfth birthday" in subdivision (1) (a) for "twelve (12) years of age or younger"; added the second sentence to subdivision (1) (a); completely rewrote subdivision (1) (b), for text of which see parent volume; inserted "prescribed by the board" after "ventilation system" in subdivision (1) (c); inserted "be used and" before "be

capable of removing" in subdivision (1) (c); inserted "entirely" before "open construction" in subdivision (1) (d); inserted "or safety" after "navigation" in two places near the end of subdivision (1) (f); and made minor changes in style and phraseology.

The 1975 amendment inserted "including houseboats and floating cabins" in the first paragraph of subsection (5); and added the second paragraph to subsection (5).

The 1977 amendment redesignated the former second sentence of subdivision (1) (a) as subsection (4); redesignated former subdivision (1)(b) as subsection (3); redesignated former subdivisions (1)(c) and (1)(d) as subdivisions (1)(b) and (1)(c); substituted "commission" for "board" throughout the section; redesignated former subsections (3) and (4) as subsections (6) and (7); deleted the first paragraph of former subsection (5) reading "A vessel, including houseboats and floating cabins, may not be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage may be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the board of health and environmental sciences"; deleted "not later than April 30,

1976" before "a wastewater holding system" in subsection (5); substituted "water carried waste products" for "sewage as defined in section 69-4802, R.C.M. 1947" in subsection (5); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 2 of Ch. 305, Laws 1975 read "Section 69-3508.2, R. C. M. 1947, is repealed."

69-3506. Exemption from numbering provisions of this act. A motorboat shall not be required to be numbered under this act, if it is:

(1) Already covered by a number in full force and effect which has been awarded to it pursuant to federal law or a federally approved numbering system of another state; provided, that such vessel shall not have been within this state for a period in excess of sixty (60) consecutive days. After sixty (60) consecutive days within this state, this state becomes the motorboat's state of principal use and the owner must apply for a Montana number, certificate of number and license decal.

(2) A motorboat from a country other than the United States temporarily using the waters of this state.

(3) A motorboat whose owner is the United States, a state or subdivision thereof.

(4). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 285, L. 1959; amd. Sec. 6, Ch. 514, L. 1973.

Amendments

The 1973 amendment deleted "or vessel" following "motorboat" in the preliminary clause; reduced the period dur-

ing which a motorboat from another state may be used without obtaining a Montana certificate of number from 90 to 60 days; added the second sentence to subdivision (1); and substituted "motorboat" for "vessel" near the beginning of subdivisions (2) and (3).

69-3507. Boat liveries. (1) The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is permitted by him to be operated, the identification number of such vessel, the departure date and time, and the expected time of return. The record shall be preserved for at least 6 months.

(2) Neither the owner of a boat livery nor his agent or employee shall permit any motorboat or any vessel permitted by him to be operated as a motorboat or vessel to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to 69-3505 and any rules made pursuant thereto.

History: En. Sec. 7, Ch. 285, L. 1959; amd. Sec. 9, Ch. 124, L. 1977.

Amendments

The 1977 amendment deleted "designated or" before "permitted by him to be operated" in the middle of the first

sentence of subsection (1); deleted "designated or" before "permitted by him to be operated" near the beginning of subsection (2); deleted "and regulations" after "rules" near the end of subsection (2); and made minor changes in phraseology, punctuation and style.

69-3508. Prohibited operation and mooring—enforcement. (1) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person may operate or knowingly permit any person to operate any motorboat or vessel or manipulate any water skis, surfboard, or similar device or other contrivance while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

(3) It is unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person may operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this act is intended to prevent the operator of a vessel actually competing in a regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person may make a reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or ski belt.

(7) No person may moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the department or in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor may any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

History: En. Sec. 8, Ch. 285, L. 1959; amd. Sec. 7, Ch. 514, L. 1973; amd. Sec. 10, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment inserted "or other contrivance" in subsections (a) and (b); inserted "departure from" in subsection (e); and added subsections (g) and (h).

The 1977 amendment redesignated former subsections (a) through (h) as subsections (1) through (8); substituted "ski belt" for "ring buoy" at the end of subsection (6); substituted "commission" for "board" in subsection (7); and made minor changes in phraseology, punctuation and style.

69-3508.1. Discharge of waste from vessel prohibited. No person shall discharge or cause, permit, or suffer to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, or near the waters of any stream, river, or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965; amd. Sec. 8, Ch. 514, L. 1973; amd. Sec. 11, Ch. 124, L. 1977.

The 1977 amendment inserted "or near" before "the waters of any stream"; and made minor changes in phraseology and punctuation.

Amendments

The 1973 amendment substituted "vessel" for "boat."

69-3508.2. Repealed.

Repeal

Section 69-3508.2 (Sec. 3, Ch. 169, L. 1965; Sec. 9, Ch. 514, L. 1973), relating to

the penalty for discharge of waste from a vessel was repealed by Sec. 2, Ch. 305, Laws of 1975.

69-3510. Restricted areas. (a) and (b). * * * [Same as parent volume.]

(c) Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of such areas.

(d) No person, without permission, or unless unavoidable shall operate or knowingly permit any person to operate a vessel within fifty (50) feet of a person engaged in fishing.

History: En. Sec. 10, Ch. 285, L. 1959; amd. Sec. 10, Ch. 514, L. 1973.

subsection (c) from yellow and red colored buoys to white buoys with international orange markings; increased the distance specified in subsection (d) from 20 to 50 feet; and made a minor change in style.

Amendments

The 1973 amendment changed the coloring for buoys marking swimming areas in

69-3512. Collisions, accidents, and casualties. (1) The operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), shall render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty and give his name, address, and identification of his vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The department shall prepare and distribute to each sheriff's office and each game warden of this state a standardized accident report form. Any person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of \$100 shall immediately report such collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

(3) A sheriff advised of a collision, accident, or other casualty reported under this act shall:

(a) conduct an appropriate investigation of such collision, accident, or other casualty; and

(b) prepare and submit a report of the results of the investigation, together with the completed standardized accident report forms, to the department.

History: En. Sec. 12, Ch. 285, L. 1959; amd. Sec. 11, Ch. 514, L. 1973; amd. Sec. 12, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment inserted references to state game wardens in two places in subsection (b); and inserted "disappear-

ance" following "casualty involving a death" in the middle of subsection (b).

The 1977 amendment redesignated former subsections (a) through (c) as subsections (1) through (3); substituted "commission" for "board" throughout the section; and made minor changes in phraseology, punctuation and style.

69-3513. Transmittal of information. In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the department pursuant to subsections (2) and (3) of 69-3512, as amended, shall be transmitted to such official or agency of the United States.

History: En. Sec. 13, Ch. 285, L. 1959; amd. Sec. 13, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment substituted "commission" for "board"; substituted "subsections (2) and (3) of 69-3512, as amended" for "section 69-3512 (b) and (c)"; and made a minor change in phraseology.

69-3514. Water skis and surfboards. (1) No person may operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on water skis, a surfboard, or similar device or other contrivance unless the operator is at least 12 years of age and there is a second person, at least 12 years of age, in the vessel to act as observer to observe the person being towed.

(2) No person may engage in waterskiing, surfboarding, or similar activity or towing some other contrivances at any time between the hours from 1 hour after sunset to 1 hour before sunrise, except that this subsection does not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this act.

(3) All right-of-way rules applying to the towing vessel shall apply.

History: En. Sec. 14, Ch. 285, L. 1959; amd. Sec. 12, Ch. 514, L. 1973; amd. Sec. 14, Ch. 124, L. 1977.

in two places; and inserted the age requirement for the operator, and the requirement for an observer.

Amendments

The 1973 amendment inserted "motorboat or" near the beginning of subsection (a); inserted "for the purpose of" before "towing a person" in subsection (a); inserted references to "other contrivances"

The 1977 amendment redesignated former subsection (a) as subsections (1) and (2); redesignated former subsection (b) as subsection (3); and made minor changes in phraseology, punctuation and style.

69-3516. Filing of rules. A copy of the rules adopted pursuant to this act and of any amendments thereto shall be filed in the office of the department and in the office of the secretary of state. Rules shall be published by the department in a convenient form and made easily available to all vessel operators.

History: En. Sec. 16, Ch. 285, L. 1959; amd. Sec. 15, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1977 amendment substituted "rules"

for "regulations" in the first sentence; substituted "commission" for "board" in two places; deleted "and regulations" after "Rules" at the beginning of the second sentence; and made minor changes in punctuation.

69-3516.1. Education program. The department shall coordinate a statewide boat safety education program.

History: En. Sec. 13, Ch. 514, L. 1973; amd. Sec. 16, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Title of Act

An act to amend sections 69-3502, 69-3503, 69-3504, 69-3504.1, 69-3505, 69-3506, 69-3508, 69-3508.1, 69-3508.2, 69-3510, 69-3512, 69-3514, 69-3517, and 69-3518, R. C. M. 1947, all relating to the operation, occupancy, licensing and certification of

motorboats and other vessels; providing for disposition of funds from licensing and fines arising from motorboat operation; providing for protection of navigational markers; prescribing penalties for violation; and providing an effective date.

Amendments

The 1977 amendment substituted "commission" for "board."

69-3517. Enforcement of act. It shall be the duty of the department to enforce the sections of this law. The state fish and game director shall employ all the necessary personnel to comply with this section. All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of 69-3501 through 69-3518, as amended.

History: En. Sec. 17, Ch. 285, L. 1959; amd. Sec. 2, Ch. 336, L. 1969; amd. Sec. 14, Ch. 514, L. 1973; amd. Sec. 17, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment inserted "and all United States coast guard law enforce-

ment officers" near the end of the third sentence.

The 1977 amendment deleted "fish and game" before "commission" in the first sentence; added "as amended" at the end of the section; and made a minor change in style.

69-3518. Penalty. Violations of any section of this chapter unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than \$15 or more than \$500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund. The moneys shall be used only by the department for enforcement of 69-3501 through 69-3518, as amended.

History: En. Sec. 18, Ch. 285, L. 1959; amd. Sec. 15, Ch. 514, L. 1973; amd. Sec. 18, Ch. 124, L. 1977; amd. Sec. 13, Ch. 417, L. 1977.

Amendments

The 1973 amendment inserted "unless otherwise specified" near the beginning of the first sentence; increased the minimum fine from \$10.00 to \$15.00; increased the maximum imprisonment from 30 days to six months; and added the second sentence.

The 1977 amendment deleted "fish and game" before "commission" in the third sentence; added "as amended" to the end of the third sentence; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 16 of Ch. 514, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved April 4, 1973.

CHAPTER 36—AMBULANCE SERVICE

Section

- 69-3604. Findings and purposes.
- 69-3605. Definitions.
- 69-3606. License required.
- 69-3607. Fee—term of license.
- 69-3608. Cancellation or denial of licenses—procedure.

- 69-3609. Rules and regulations—co-operative agreements.
- 69-3610. Inspections.
- 69-3611. Authority of board to issue subpoenas.
- 69-3612. Penalty.
- 69-3613. License fee—supersedes other fees.

69-3604. Findings and purposes. The public welfare requires the establishment of minimum uniform standards for the operation of ambulance services as defined in section 2 [69-3605] of this act, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate improper care that may endanger the health of the public. The regulation of establishments providing such service is in the interest of social well-being, and the health and safety of the state and all its people.

History: En. Sec. 1, Ch. 387, L. 1971.

standards and regulations for ambulance services as required by public interest.

Title of Act

An act to establish minimum uniform

69-3605. Definitions. Unless the context requires otherwise, in this act:

(1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this act, but does not include a motor vehicle owned by, or operated under the direct control of the United States or this state of Montana.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(8) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state.

History: En. Sec. 2, Ch. 387, L. 1971;
amd. Sec. 11, Ch. 349, L. 1974; amd. Sec.
1, Ch. 86, L. 1977.

Amendments

The 1974 amendment substituted the definition of "Department" in subdivision

(7) for "Executive officer" means the executive officer of the Montana state department of health or his designated official"; substituted "board of health and environmental sciences, provided for in section 82A-605" for "board of health of the state of Montana" in subdivision (8);

deleted a definition as follows: "License officer" means the executive officer of the Montana state department of health or his designated official"; and made minor changes in phraseology and punctuation.

The 1977 amendment added the second sentence to subdivision (9).

69-3606. License required. (1) Every person conducting or operating an ambulance service shall procure a license issued by the department. A separate license shall be required for each establishment.

(2) Applications for a license shall be made in writing to the department on forms specified by the department.

(3) Licenses shall be granted as a matter of right, unless conditions exist as specified by this act which are grounds for a cancellation or denial of a license. The applicant may apply for a hearing and judicial review as specified by this act upon being denied a license or upon cancellation.

History: En. Sec. 3, Ch. 387, L. 1971.

69-3607. Fee—term of license. (1) There shall be paid to the department with each application for a license or for renewal of a license, an annual license fee of five dollars (\$5). The department shall deposit fees with the state treasurer to the credit of the state general fund.

(2) Each license shall expire on December 31 following its date of issue, unless cancelled for cause. Renewal may be obtained by paying the required annual license fee. The license shall not be transferable nor be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 387, L. 1971.

69-3608. Cancellation or denial of licenses—procedure. (1) The department may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department, is a bar to prosecution for violation.

(2) The department may not deny or cancel a license without:

(a) Delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) An opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In this case, the licensee shall make written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received. If the board finds that the violations of this act do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed one (1) year, during which time a license may not be denied the licensee nor may his license be canceled. Subsequent exceptions

may be granted the licensee, each for a period not to exceed one (1) year, and each after a hearing before the board.

(3) On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

(4) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or the rules adopted under this act.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974.

act" for "regulations of this act" in the first sentence of subsection (1) and at the end of subsection (4); deleted a provision pertaining to review of orders made by the executive officer in the district court of the county in which the licensed premises are located; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted references to "department" for references to "executive officer" in subsections (1) and (2); substituted "rules adopted under this

69-3609. Rules and regulations — co-operative agreements. (1) The department shall prescribe and enforce rules and regulations which are necessary to carry out the provisions of this act. These rules and regulations shall relate to ambulance equipment, training, operations (records), personnel, cleanliness, and insurance.

(2) No rules or regulations shall be effective until a public hearing has been held for review of the rules and regulations. Notice of the public hearing shall be sent by ordinary mail at least thirty (30) days before the hearing to all Montana licensed operators along with a copy of the proposed regulations.

(3) The department may enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

(4) Pursuant to the provisions of this act, required equipment in an ambulance which is maintained and regularly used for the transportation of patients shall consist of the minimal equipment for ambulances as adopted by the American college of surgeons, March, 1967, and required training shall be set at a level of advanced American Red Cross first aid or its equivalent. Nothing in this section shall preclude the use of any vehicle for the transportation of the injured in instances of emergency, need, or disaster situations, and the department shall not prescribe and enforce any rules and regulations related to ambulance equipment and training which exceed these requirements.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974.

partment" for "board" in the first sentence of subsection (1) and in subsection (4).

Amendments

The 1974 amendment substituted "de-

69-3610. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this act. The department shall make regular inspections as the rules of the department may direct, and special inspections which the department may consider necessary.

(2) The department has free access at all reasonable hours to the establishments listed and defined in section 69-3605, to make inspections.

History: En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974.

Amendments

The 1974 amendment rewrote the second sentence of subsection (1) which read: "Each authorized representative shall make regular inspections as the rules and regulations of the board may direct, and such special inspections as the department may

from time to time direct, and he shall make such reports relative to the conditions existing at such times and in such manner as the board may direct"; substituted "The department has" for "All persons authorized by this act or by regulations adopted under this act shall" at the beginning of subsection (2); and made minor changes in phraseology and punctuation.

69-3611. Authority of board to issue subpoenas. In any proceeding under this act, the board may administer oaths and issue subpoenas, summon witnesses, and take testimony of any person within the state of Montana.

History: En. Sec. 8, Ch. 387, L. 1971.

69-3612. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) or imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 387, L. 1971.

69-3613. License fee—supersedes other fees. Payment of the license fee stipulated in this act shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 387, L. 1971.

Separability Clause

Section 11 of Ch. 387, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid

in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 12 of Ch. 387, Laws 1971 read "Effective date. This act is effective January 1, 1972."

CHAPTER 39—AIR POLLUTION

Section

- 69-3906. Definitions.
- 69-3907. Administration.
- 69-3908. Air pollution control advisory council—meetings—minutes—duties.
- 69-3909. Powers of board.
- 69-3909.1. Powers of department.
- 69-3911. Permits.
- 69-3912. Inspections.
- 69-3914. Enforcement.
- 69-3915. Emergency procedure.
- 69-3916. Variances—filing fees.
- 69-3917. Hearings and judicial review.
- 69-3918. Confidentiality of records.
- 69-3919. Local air pollution control programs.
- 69-3921. Penalties.
- 69-3921.1. Civil penalties—actions against defendants not found in Montana.

69-3906. Definitions. Unless the context requires otherwise, in this act:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

(5) "Advisory council" means the air pollution control advisory council provided for in section 82A-606.

(6) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

History: En. Sec. 3, Ch. 313, L. 1967; amd. Sec. 13, Ch. 349, L. 1974; amd. Sec. 1, Ch. 308, L. 1977.

Amendments

The 1974 amendment substituted "provided for in section 82A-606" for "created by this act" at the end of subdivision (5); deleted a definition as follows: "Director" means the director of air pollution control,

a position created by this act"; substituted "board of health and environmental sciences, provided for in section 82A-605" for "state board of health" in subdivision (6); added the definition of "department" in subdivision (7); and made minor changes in phraseology and punctuation.

The 1977 amendment added "and includes persons resident in Canada" to subdivision (4).

69-3907. Administration. The department is responsible for the administration of this act.

History: En. Sec. 4, Ch. 313, L. 1967; amd. Sec. 14, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state board of health" and deleted provisions pertaining to the appointment, qualifications, salary and powers and duties of the director of air pollution.

69-3908. Air pollution control advisory council—meetings—minutes—duties. (1) A chairman shall be elected by the advisory council from among its number.

(2) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him on receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

(3) The secretary of the advisory council shall be a member of the staff of the department, designated by the director of health and environmental sciences. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to ac-

tions taken by persons in response to recommendations and orders issued under this act and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted under this act or specific authority otherwise given the advisory council.

(4) The advisory council shall act in an advisory capacity to the department on matters relating to air pollution.

History: En. Sec. 5, Ch. 313, L. 1967; amd. Sec. 16, Ch. 349, L. 1974.

Amendments

The 1974 amendment rewrote this section to delete provisions pertaining to the appointment, qualifications, terms, and compensation of the members of the advisory council; substituted "department" for "state board of health" and "director of health and environmental sciences" for "executive officer of the board" in sub-

section (3); substituted the provision of subsection (4) for "The advisory council may consider standards, rules, and regulations as provided in section 69-3913 and any other matter related to the purposes of the act, which may be submitted to it by the board. It may make recommendations to the board on its own initiative concerning the administration of this act"; and made changes in phraseology and punctuation.

69-3909. Powers of board. The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to effectuate the purposes of this act.

(4) By rule require access to records relating to emissions.

(5) Establish ambient air quality standards for the state.

History: En. Sec. 6, Ch. 313, L. 1967; amd. Sec. 17, Ch. 349, L. 1974.

Amendments

The 1974 amendment deleted references to the director and provisions pertaining to his powers and duties as a hearing offi-

cer in subdivision (2); inserted "By rule" at the beginning of subdivision (4); deleted a listing of powers now assigned to the department by section 69-3909.1; and made changes in phraseology and punctuation.

69-3909.1. Powers of department. The department shall:

(1) Enforce orders issued by the board by appropriate administrative and judicial proceedings;

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(4) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of this act;

(5) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a co-operative basis, and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local

government to share the cost of the program. However, the state share may not exceed thirty per cent (30%) of the total cost.

(6) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(7) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state;

(8) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state, and make recommendations to appropriate public and private bodies with respect to this.

(9) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(10) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(11) Consult, on request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of this device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this act, rules in force under it, or any other provision of law.

(12) Accept, receive, and administer grants or other funds or gifts from public or private agencies including the United States, for the purpose of carrying out this act. Funds received under this section shall be deposited in the state treasury to the account of the department.

History: En. 69-3909.1 by Sec. 18, Ch. 349, L. 1974.

69-3911. Permits. (1) The board may by rule prohibit the construction, installation, alteration, or use of a machine, equipment, device, or facility which it finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained.

(2) Not later than 180 days before construction begins and not later than 120 days before installation, alteration, or use begins, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The department may, for good cause shown, waive the provisions of subsection (2) or shorten the time required for filing the appropriate applications.

(4) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(5) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing, within 30 days after the purported filing of an application, that the application is incomplete and fails to list the reasons

why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(6) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this section.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing, within 180 days of the receipt of a filed application as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant in writing, within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application.

(8) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act. The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

History: En. Sec. 8, Ch. 313, L. 1967; amd. Sec. 1, Ch. 185, L. 1975; amd. Sec. 4, Ch. 140, L. 1977.

Amendments

The 1975 amendment inserted "construction" before "installation" in subsection (1); substituted "facility" for "other article" in subsection (1); inserted "directly or indirectly" before "cause or contribute" in subsection (1); inserted subsections (2), (3), (5), (7) and (8); redesignated former subsections (2) and (3) as subsections (4) and (6); substituted "department" for "board" in subsections (4) and

(6); deleted a former subsection (4) which required the board to act upon an application within ninety days; substituted "shall require" for "may require" in subsection (4); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

The 1977 amendment deleted "or regulations" after "rule" near the beginning of subsection (1); deleted "Notwithstanding anything contained in subsection (2)" at the beginning of subsection (3); and made minor changes in phraseology, punctuation and style.

69-3912. Inspections. (1) The department may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force under it.

(2) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials when the department requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report stating all facts found which relate to compliance status.

History: En. Sec. 9, Ch. 313, L. 1967; amd. Sec. 19, Ch. 349, L. 1974; amd. Sec. 5, Ch. 140, L. 1977.

Amendments

The 1974 amendment substituted "The department" for "Any duly authorized

officer, employee, or representative of the board" at the beginning of subsection (1); substituted "department" for "board" in the first sentence of subsection (2); and

made minor changes in phraseology and punctuation.

The 1977 amendment made minor changes in phraseology and punctuation.

69-3914. Enforcement. (1) When the department believes that a violation of this act or a rule made under it has occurred, it may cause written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 69-3921 or 69-3921.1.

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of the parties.

History: En. Sec. 11, Ch. 313, L. 1967; amd. Sec. 20, Ch. 349, L. 1974; amd. Sec. 6, Ch. 140, L. 1977.

ginning of subsection (3); inserted "or department" after "board" in subsection (4); and made minor changes in phraseology and punctuation.

The 1977 amendment added "or 69-3921.1" to the end of subdivision (3)(b); and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "department" for "board" in the first sentence of subsection (1) and near the be-

69-3915. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants. Upon issuance of this order, the

department shall fix a place and time within 24 hours for a hearing to be held before the board. Within 24 hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 69-3914. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders as provided in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute or constitutional provisions, or inheres in the office.

History: En. Sec. 12, Ch. 313, L. 1967; amd. Sec. 21, Ch. 349, L. 1974; amd. Sec. 7, Ch. 140, L. 1977.

Amendments

The 1974 amendment substituted references to "department" for references to "director" in subsections (1) and (2) and

made minor changes in phraseology and punctuation.

The 1977 amendment deleted "or persons" after "person" and "or operations" after "operation" near the end of the first sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

69-3916. Variances—filing fees. (1) A person who owns or is in control of a plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant an exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption may be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption pursuant to this section may be granted for a period to exceed 1 year, but the exemption or partial exemption may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application shall be made at least 60 days before the expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall give public notice of his application in accordance with rules of the board. A renewal pursuant to this

subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).]

(4) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review thereof as provided by 69-3917.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of 69-3915 to a person or his property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, environmental impact statement, or appreciable investigation by the department is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the earmarked revenue fund provided for in 79-410. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department:

(a) to compile the information required for rendering a decision on the request;

(b) to compile the information necessary for any environmental impact statements;

(c) to offset the costs of a public hearing, printing, or mailing; and

(d) to carry out its other responsibilities under this chapter.

History: En. Sec. 13, Ch. 313, L. 1967; amd. Sec. 1, Ch. 186, L. 1975; amd. Sec. 8, Ch. 140, L. 1977.

Amendments

The 1975 amendment added subsection (6); and made minor changes in style.

The 1977 amendment deleted "or regulations" after "rules" in three places; de-

leted the former third sentence of subsection (6) reading "The value of any fee in excess of five hundred dollars (\$500) shall be calculated by determining the cost of the equipment required to bring the facility into compliance with the rule(s) for which the variance is being sought"; and made minor changes in phraseology, punctuation and style.

69-3917. Hearings and judicial review. (1) No rule and no amendment or repeal thereof may take effect except after public hearing on due notice and after the advisory council has been given at least 30 days before publication of the proposed text to comment thereon. The notice

shall be given by public advertisement not less than 20 or more than 30 days before the date set for the public hearing.

(2) Nothing in this section may be construed to require a hearing before the issuance of an emergency order pursuant to 69-3915.

(3) A person aggrieved by an order of the board or local control authority may apply for rehearing upon one or more of the following grounds, and upon no other grounds:

(a) the board or local control authority acted without or in excess of its powers;

(b) the order was procured by fraud;

(c) the order is contrary to the evidence;

(d) the applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing; or

(e) competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, a party aggrieved thereby may appeal to the district court of the judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the chairman of the board, which service shall be made by the delivery of a copy of the notice to the chairman and by filing the original with the clerk of the court to which the appeal is taken. Immediately after service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(5) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967;
amd. Sec. 9, Ch. 140, L. 1977.

twice in the first sentence of subdivision (4)(b) for references to the executive officer of the board; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted references to the chairman of the board

69-3918. Confidentiality of records. (1) Records or other information concerning air contaminant sources which are furnished to or obtained by

the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air contaminant source which would, if disclosed, reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein. Any trade secrets not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. However, emission data shall never be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 15, Ch. 313, L. 1967; amd. Sec. 22, Ch. 349, L. 1974; amd. Sec. 1, Ch. 248, L. 1975.

Amendments

The 1974 amendment inserted "or department" after "board" in subsections (1) and (2) and made minor changes in phraseology and punctuation.

The 1975 amendment rewrote subsection (1) which read: "Records or other information concerning air contaminant sources

which are furnished to or obtained by the board or department, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, are only for the confidential use of the board or department in the administration of this act, unless the owner expressly agrees to their publication or availability to the general public."

69-3919. Local air pollution control programs. (1) A municipality or county may establish a local air pollution control program on being petitioned by fifteen per cent (15%) of the qualified electors in its jurisdiction, and may thereafter administer in its jurisdiction the air pollution control program which:

(a) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 69-3913, 69-3915 and 69-3916 and rules issued under these sections;

(b) Provides for the enforcement of these requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program; and

(d) If the program is consistent with this act and is approved by the board after a public hearing conducted under section 69-3909.

(2) If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations, or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force under this section is inadequate to prevent and control air pollution in the jurisdiction to which the program relates, or that the program is being administered in a manner inconsistent with this act, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(5) If the jurisdiction fails to take these measures within the time required, the department shall administer within such jurisdiction all of the provisions of this act. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that class of air contaminant source. No charge may be assessed against the jurisdiction therefor. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the department administers its air pollution control program under subsection (5) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in co-operation with one (1) or more municipalities or counties of this state or of other states.

History: En. Sec. 16, Ch. 313, L. 1967; "it may" in the first sentence of subsection (6); deleted a provision pertaining to the continuing jurisdiction of local air pollution control programs in operation on the effective date of the 1967 act; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted references to "department" for references to "board" in subsections (5) and (7); inserted "direct the department to" after

69-3921. Penalties. (1) A person who violates this act, or a rule or order made under it, other than section 69-3918, is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000). Each day of violation constitutes a separate offense.

(2) A person who willfully violates section 69-3918 is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000).

(3) Action under subsections (1) or (2) of this section are not a bar to enforcement of this act, or of rules or orders made under it, by injunction or other appropriate remedy. The department may institute and maintain in the name of the state any enforcement proceedings.

(4) This act does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(5) Fines collected shall be deposited to the state general fund.

History: En. Sec. 18, Ch. 313, L. 1967; amd. Sec. 24, Ch. 349, L. 1974.

partment" for "board" in the second sentence of subsection (3) and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

69-3921.1. Civil penalties—actions against defendants not found in Montana. (1) Any person who violates any provision of this chapter, or any rule enforced thereunder or any order made pursuant thereto, shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000). Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in section 69-3921.

(2) (a) Action under subsection (1) of this section is not a bar to enforcement of this chapter, or of rules or orders made under it, by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or the rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund.

History: En. 69-3921.1 by Sec. 1, Ch. 98, L. 1975; amd. Sec. 2, Ch. 308, L. 1977.

Amendments

The 1977 amendment redesignated former subsection (2) as subdivision (2) (a); and inserted subdivision (2)(b).

Title of Act

An act providing for determination and collection of civil penalties under the Clean Air Act.

69-3923. Repealed.

Repeal

Section 69-3923 (Sec. 20, Ch. 313, L. 1967; Sec. 47, Ch. 391, L. 1973; Sec. 25,

Ch. 349, L. 1974), relating to classification of property for taxation, was repealed by Sec. 74, Ch. 566, Laws 1977.

CHAPTER 40—REFUSE DISPOSAL AREAS

Section	
69-4001.	Legislative findings and policy.
69-4001.1.	Short title.
69-4002.	Definitions.
69-4003.	Unapproved disposal prohibited.
69-4004.	License required.
69-4005.	State hazardous waste disposal facility.
69-4006.	Revocation or denial of license.
69-4007.	Powers and duties of department.
69-4008.	Exclusion from chapter.
69-4009.	Penalty for violations.

- 69-4010. Section preserved.
- 69-4011. Short title.
- 69-4012. Purpose and public policy.
- 69-4013. Definitions.
- 69-4014. Duties of department.
- 69-4015. Powers and duties of the board.
- 69-4016. The state solid waste management plan.
- 69-4017. Powers and duties of local government.
- 69-4018. Solid waste management loans.
- 69-4019. Act supplemental.
- 69-4020. Availability of state loans.

69-4001. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of hazardous wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible.

History: En. Sec. 1, Ch. 35, L. 1965; amd. Sec. 1, Ch. 542, L. 1977.

Amendments

The 1977 amendment substituted "solid waste management systems" in each

sentence for "refuse disposal areas"; added "and by the improper and unregulated disposal of hazardous wastes" to the first sentence; and added "and to conserve natural resources whenever possible" to the last sentence.

69-4001.1. Short title. This chapter may be cited as "The Montana Solid Waste Management Act".

History: En. 69-4001.1 by Sec. 2, Ch. 542, L. 1977.

Title of Act

An act revising Title 69, chapter 40; providing a short title for purposes of citing the chapter; authorizing the department of health and environmental

sciences to license solid waste management systems; authorizing the department to initiate and maintain actions to collect civil penalties; providing control over the storage, treatment, and disposal of hazardous wastes; and amending sections 69-4001, 69-4002, 69-4003, 69-4004, 69-4005, 69-4006, 69-4007, and 69-4008, R.C.M. 1947.

69-4002. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood by-products and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood by-products.

(2) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(3) "Board" means the board of health and environmental sciences, provided for in 82A-605.

(4) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity whether organized for profit or not.

(5) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or onto the land so that the solid waste or hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(6) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

(7) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(8) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(9) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(10) "Hazardous waste management" means the management of the storage, transport, treatment, recycling, recovery, or disposal of hazardous wastes.

(11) "Resource recovery" means the recovery of material or energy from solid waste.

(12) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(13) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(14) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

History: En. Sec. 2, Ch. 35, L. 1965; amd. Sec. 26, Ch. 349, L. 1974; amd. Sec. 3, Ch. 542, L. 1977.

Amendments

The 1974 amendment added the definitions of "Department" and "Board" in subdivisions (4) and (5), and made minor changes in phraseology and punctuation.

The 1977 amendment substituted subdivision (1) for former subdivisions (1) through (3) defining garbage, refuse and rubbish; redesignated former subdivisions (4) and (5) as subdivisions (2) and (3); added subdivisions (4) through (14); and made minor changes in phraseology. For prior version, see parent volume and 1974 amendment note.

69-4003. Unapproved disposal prohibited. No person may dispose of solid waste or transport hazardous waste except as permitted under this chapter.

History: En. Sec. 3, Ch. 35, L. 1965; amd. Sec. 4, Ch. 542, L. 1977.

Amendments

The 1977 amendment deleted "partner-

ship, company or corporation" after "person"; substituted "solid waste" for "any garbage, rubbish or refuse in any place"; inserted "or transport hazardous waste"; and made minor changes in phraseology.

69-4004. License required. (1) Except as provided in 69-4008, no person may dispose of solid waste or hazardous waste, operate a solid waste management system, or transport hazardous waste without a license from the department. The department shall provide application forms for a license as provided in this chapter. The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.

(2) When the department receives an application for a license pursuant to the provisions of this chapter, the local health officer in the county where the solid waste management system will be located shall be notified in writing of the application within 15 days after the department has received the application. If the department decides to issue a license pursuant to the provisions of this chapter, the department shall notify the local health officer in writing. A license issued by the department under this section shall not be valid until signed by the local health officer having jurisdiction in the county in which the solid waste management system will be operated. The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated. The local health officer may only refuse to validate a license issued under this chapter upon a finding that the requirements of this chapter and the rules implementing this chapter cannot be satisfied. If the local health officer refuses to validate the license, he shall notify the applicant, the department and any other interested person in writing. The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board of health and environmental sciences within 30 days after receiving written notice of the local health officer's decision. The hearing before the board of health and environmental sciences shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 35, L. 1965; amd. Sec. 1, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 5, Ch. 542, L. 1977.

Amendments

The 1974 amendment substituted "de-

partment" for "state department of health."

The 1977 amendment completely rewrote this section. For prior version, see parent volume.

69-4005. State hazardous waste disposal facility. The department may establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes accepted by the department as a result of spills, embargoes, citizen assist-

ance requests, and other similar occurrences. A state facility shall meet all the requirements for a hazardous waste disposal site required by this chapter.

History: En. Sec. 5, Ch. 35, L. 1965; amd. Sec. 2, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 6, Ch. 542, L. 1977.

partment" for "state department of health."

The 1977 amendment completely rewrote this section. For prior version, see parent volume.

Amendments

The 1974 amendment substituted "de-

69-4006. Revocation or denial of license. The department may deny or revoke a license to operate a solid waste management system after giving the applicant and the local health officer written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this chapter or a rule or order issued pursuant to this chapter. The hearing held before the board on a denial or revocation shall be held pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 35, L. 1965; amd. Sec. 7, Ch. 542, L. 1977.

Amendments

The 1977 amendment completely rewrote this section. For prior version, see parent volume.

69-4007. Powers and duties of department. (1) The department shall adopt rules governing solid waste management systems which shall include but not be limited to:

(a) requirements for the plan of operation and maintenance that must be submitted with an application under this chapter;

(b) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(c) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(d) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(e) procedures and requirements for the submission of reports on the operation and maintenance of a hazardous waste disposal site, the transport of hazardous waste, and the generation of hazardous wastes; and

(f) any other factors relating to the sanitary disposal or management of solid wastes.

(2) The department has continuing authority and responsibility to inspect a solid waste management system under the provisions of this chapter. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the department.

(3) The department may, through the attorney general or appropriate county attorney, initiate and maintain in district court enforcement actions, as provided in this chapter, including actions to collect a criminal penalty or to enjoin the operation of a solid waste management system that is in

violation of this chapter or a rule adopted by the department or order issued as provided in this chapter.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 8, Ch. 542, L. 1977.

Amendments

The 1974 amendment substituted "de-

partment" throughout the section for "state department of health."

The 1977 amendment completely rewrote this section. For prior version, see parent volume and 1974 amendment note.

69-4008. Exclusion from chapter. (1) This chapter may not be construed to prohibit a person from disposing of his own solid waste, except hazardous waste, upon land owned, leased, or covered by easement or permit as long as it does not create a nuisance or public health hazard.

(2) A person may dispose of his own hazardous wastes upon land owned, leased, covered by easement or permit, after complying with the licensing requirements of this chapter and the rules that shall be adopted to regulate the disposal or transport of hazardous wastes.

(3) The licensing requirements of this chapter do not apply to the transportation of marketable hazardous wastes to a manufacturing or processing center.

(4) If it is determined that an application for a certificate under the major facility siting act, Title 70, chapter 8, R.C.M. 1947, will result in the generation, transport, storage, or disposal of hazardous wastes as defined in this chapter, the department shall conduct its review under the provisions of this chapter concurrently with the studies of air and water quality conducted under the provisions of the major facility siting act. A decision to grant or deny a license for the transport, storage or disposal of hazardous wastes under the provisions of this chapter shall be appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the major facility siting act. If the initial license has been granted as specified in this subsection, all renewals or modifications of a license, or enforcement actions concerning alleged violations of the license and the provisions of this chapter shall be conducted pursuant to the procedures and enforcement provisions established in this chapter.

(5) The exclusion contained in subsection (1) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977 which falls within the definition of subdivision in Title 69, chapter 50, or the Montana Subdivision and Platting Act in Title 11, chapter 38.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969; amd. Sec. 9, Ch. 542, L. 1977.

Amendments

The 1977 amendment substituted "solid waste" in subsection (1) for "garbage, rubbish or refuse"; added "or public

health hazard" to subsection (1); deleted the former second sentence which exempted cities, towns, rural improvement districts and counties from payment of the license fee but required them to meet all other requirements of the chapter; added subsections (2) through (5); and made minor changes in phraseology.

69-4009. Penalty for violations. (1) Any person violating this act or regulations prescribed by the department under this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50, nor

more than \$500. Each day upon which a violation of this act occurs shall be considered a separate offense.

(2) A person who stores, treats, transports, or disposes of a hazardous waste in violation of this chapter, a rule adopted as authorized by this chapter, or an order issued as provided in this chapter is subject to a civil penalty of not more than \$25,000. Each day upon which a violation occurs is a separate violation.

History: En. Sec. 9, Ch. 35, L. 1965; amd. Sec. 5, Ch. 349, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; amd. Sec. 10, Ch. 542, L. 1977.

Amendments

The 1974 amendment substituted "department" for "state department of health."

The 1977 amendment added subsection (2); and made minor changes in style.

69-4010. Section preserved. Section 94-3542 [69-4518] is not affected by this act.

History: En. Sec. 10, Ch. 35, L. 1965; amd. Sec. 27, Ch. 349, L. 1974.

Compiler's Notes

The compiler inserted the bracketed reference to section 69-4518. Section 94-3542 was repealed by Sec. 32, Ch. 513, Laws of 1973.

Amendments

The 1974 amendment rewrote this section which read: "All acts and parts of acts in conflict herewith are hereby repealed, except that section 32-1014 and section 94-3542 R. C. M. 1947, shall in no way be affected by this act."

69-4011. Short title. This act may be cited as the "Solid Waste Management Act".

History: En. 69-4011 by Sec. 1, Ch. 575, L. 1977.

Title of Act

An act creating a solid waste management program in the state of Montana; authorizing the department of health and environmental sciences to cre-

ate a local government grant fund for the creation of a solid waste management program; specifying the powers of a local government to secure grants and loans for the creation of a resource recovery program; and specifying the duties of the department in administering provisions of the act.

69-4012. Purpose and public policy. The purpose of 69-4011 through 69-4020 is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan. To implement this act, the following are declared to be public policies of this state:

(1) that maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment;

(2) that solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state;

(3) that private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems;

(4) that local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions

necessary to assure effective solid waste management systems throughout the state;

(5) that encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse;

(6) that the state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems; and

(7) that actions and activities performed or carried out by persons and their contractors in accordance with this act shall be in conformity with the state solid waste plan.

History: En. 69-4012 by Sec. 2, Ch. 575, L. 1977.

69-4013. Definitions. Unless the context clearly requires otherwise in 69-4011 through 69-4020, the following definitions apply:

(1) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(2) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(3) "Front-end planning funds" means the state money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(4) "Front-end organizational funds" means the state money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(5) "State solid waste plan" means the statewide plan formulated by the department as authorized by this act.

(6) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(7) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, hazardous wastes, ashes, sludge from sewage treatment plants, water supply treatment plants or air pollution control facilities; septic tank and cesspool pumpings; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood wastes and inert materials; but does not include municipal sewage, industrial wastewater effluents, or mining wastes as regulated under the mining and reclamation laws administered by the department of state lands.

(8) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(9) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity whether organized for profit or not.

(10) "Board" means the board of health and environmental sciences provided for in Title 82A, chapter 6.

History: En. 69-4013 by Sec. 3, Ch. 575, L. 1977.

69-4014. Duties of department. (1) The department shall:

(a) prepare a state solid waste management and resource recovery plan for submission to the board;

(b) prepare rules necessary for the implementation of this act for submission to the board, including but not limited to rules governing the submission of plans for a solid waste management system, rules governing procedures to be followed in applying for and making loans, and rules governing agreements between a local government and the department for grants or loans under the act;

(c) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever such financial assistance is available;

(d) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating a solid waste management system in order to insure that the system conforms to the state plan;

(e) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for such loans are available;

(f) enforce and administer the provisions of this act;

(g) administer loans made by the state under the provisions of this act; and

(h) approve plans for a proposed solid waste management system submitted by a local government.

(2) The department may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this act; and

(b) make loans to a local government for the planning, design, and implementation of a solid waste management system.

History: En. 69-4014 by Sec. 4, Ch. 575, L. 1977.

69-4015. Powers and duties of the board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in section 6; and

(2) adopt rules necessary for the implementation of this act, including but not limited to rules governing the submission of plans for a solid waste management system, rules governing the procedures to be followed in applying for and making loans, and rules governing agreements between

the local government and the department for grants and loans under the act.

History: En. 69-4015 by Sec. 5, Ch. 575, L. 1977.

69-4016. The state solid waste management plan. (1) A proposed solid waste management plan shall be prepared by the department in conjunction with local governments in the state of Montana and any other interested person. After a draft of a proposed solid waste management plan has been prepared, the department shall circulate a copy of the proposed plan to the board of county commissioners in each county in the state of Montana, the governing body of every incorporated city or town in the state of Montana, any person responsible for the operation of a solid waste management system under the provisions of Title 69, chapter 40, the governor, the environmental quality council, and any other interested person for at least 90 days prior to submission of a final proposed solid waste management plan to the board. During the 90-day period for receipt of comments on the draft plan, the department shall hold at least three public hearings around the state on the draft plan.

(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.

History: En. 69-4016 by Sec. 6, Ch. 575, L. 1977.

69-4017. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) Upon adoption of the state plan by the board of health and environmental sciences, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan; the ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in 69-4002 through 69-4010;

(3) employ appropriate personnel to carry out the provisions of this act;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this act;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system which the local government plans, designs, or constructs for such consideration and upon such terms as are established by the local governments and consistent with the loan requirements as set forth in this act and rules;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds the action is necessary to implement the purposes of this act, as long as the action is consistent with the loan requirements set forth in this act and rules;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the aforementioned powers;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or by-products resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a refuse disposal district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this act.

History: En. 69-4017 by Sec. 7, Ch. 575, L. 1977.

69-4018. Solid waste management loans. (1) The department may, in the name of the state of Montana, enter into agreements with a local government for loans, subject to any existing contractual obligations of the local government. A loan agreement shall include but not be limited to the following:

(a) the amount of the loan, not to exceed the estimated reasonable amount of the total implementation cost, excluding equipment, construction, or land acquisition as determined by the department;

(b) an agreement by the department to pay part of the amount of the loan to the local government on a timetable as may be agreed upon by the parties;

(c) an agreement by the local government to proceed with the project in accordance with plans approved by the department;

(d) an agreement by the local government to commence operation of the project on its completion and not to discontinue operations or dispose of the project without the approval of the department;

(e) an agreement by the local government to operate and maintain a solid waste management system in accordance with applicable provisions of the solid waste management act and rules of the department;

(f) an agreement by the local government to pledge any available sources of revenue to the repayment of loans according to the schedule established by the department. Any revenues from the sale of energy or recycled materials recovered from the solid waste management system and any money received under federal grants for local solid waste management may be used to make such payments. State loan funds for local solid waste management systems may be used only for front-end organizational activities.

(g) an agreement by the local government to establish and maintain adequate financial records for the project, including an annual audit of the financial records and transactions covering each fiscal year by a certified public accountant. A copy of each audit shall be submitted to the department of administration and the department within 30 days after its completion. Failure of a local government to file a copy of the audit as required by this section shall be grounds for rescinding the loan agreement.

(2) In allocating loan funds to local governments, the department shall establish priority based on a consideration of the plan that:

(a) most fully utilizes private enterprise for planning, design, management, construction, and operation of the facilities required to implement a solid waste management system;

(b) includes the largest population;

(c) is the most financially viable; and

(d) addresses the most pressing environmental and public health concerns.

(3) The department may enter into further agreements with a local government and acquire further guarantees or securities as are necessary to implement the provisions of this act.

(4) A loan agreement entered into pursuant to this act is subject to approval by the department and shall be accounted for on forms prepared by the department.

(5) The department shall establish a schedule of payments to be made by a local government under a loan agreement. Payment shall be made in an amount sufficient to pay the principal and interest cost of the loan obtained from the department.

(6) In the event the revenues of a project are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste management district. Such pro rata fee shall be based on a per ton, per pound assessment or volume assessment.

(7) If a local government fails to comply with the payment schedule established by the department, the state may, after giving 30 days written notice, withhold an equal share of any state taxes which are otherwise apportioned to the local government.

History: En. 69-4018 by Sec. 8, Ch. 575, L. 1977.

69-4019. Act supplemental. This act is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

History: En. 69-4019 by Sec. 9, Ch. 575, L. 1977.

69-4020. Availability of state loans. Loan money as provided for under this act is only available if the local government is unable to secure adequate financing from other lending institutions or is unable to provide the adequate and necessary bonding for the implementation of a proposed solid waste management system.

History: En. 69-4020 by Sec. 10, Ch. 575, L. 1977.

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 11 of Ch. 575, Laws 1977 read "If a part of this act is invalid, all valid

CHAPTER 41—BOARD AND DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES—POWERS AND DUTIES

Section

69-4102. Definitions.

69-4104. Board—officers—meetings.

69-4106. Functions, powers and duties of board.

69-4110. Functions, powers, and duties of department.

69-4111. Legal adviser to state board and department—injunction.

69-4112. Quarantine measures—adoption and enforcement.

69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons.

69-4101. Repealed.

Repeal

Section 69-4101 (Sec. 1, Ch. 197, L. 1967), relating to establishment of the state department of health, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4102. Definitions. Unless the context indicates otherwise, in sections 69-4101 through 69-5816:

(1) "State board" or "board" means the board of health and environmental sciences, provided for in section 82A-605;

(2) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(3) "Communicable disease" means a disease designated communicable by the board.

History: En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "sections 69-4101 through 69-5816" for "sections 69-4101 to 69-5701" in the introduction; substituted "board of health and environmental sciences, provided for in

section 82A-605" for "state board of health" in subdivision (1); substituted "department of health and environmental sciences, provided for in Title 82A, chapter 6" for "state department of health" in subdivision (2); deleted a definition of "Executive officer"; and made changes in phraseology and punctuation.

69-4103. Repealed.

Repeal

Section 69-4103 (Sec. 3, Ch. 197, L. 1967; Sec. 1, Ch. 107, L. 1974), relating to the

membership of the state board of health, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4104. Board—officers—meetings. (1) The board may adopt bylaws governing meetings. The director of health and environmental sciences shall serve as secretary to the board.

(2) The board shall meet once every two (2) months and may hold additional meetings on the call of the chair, at the request of the director of health and environmental sciences, or at the request of a majority of the members. If a member has three (3) unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(3) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be considered to have been called and held unless the contrary is proven.

History: En. Sec. 4, Ch. 197, L. 1967; amd. Sec. 29, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted references to "director of health and environmental sciences" for references to "executive officer" in subsections (1) and (2); deleted a sentence in subsection (1) which

read: "Four members constitute a quorum for the transaction of business"; deleted a provision for compensation of board members at the rate of twenty dollars a day and for reimbursement of expenses when attending meetings or in the discharge of other duties; and made minor changes in phraseology and punctuation.

69-4105. Repealed.

Repeal

Section 69-4105 (Sec. 5, Ch. 197, L. 1967), relating to administration of laws on

public health subjects by the department, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4106. Functions, powers and duties of board. The board shall:

(1) Advise the department in public health matters;

(2) Hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board.

History: En. Sec. 6, Ch. 197, L. 1967; amd. Sec. 28, Ch. 93, L. 1969; amd. Sec. 30, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "executive officer" in subdivision (1); substituted "duties of the board" for "duties of the state board or the department" at the end of subdivision (2); deleted a subdivision which read "bring actions in court for enforcement

of health laws and defend actions brought against the state board or department"; and made minor changes in phraseology, punctuation, and style.

69-4107 to 69-4109. Repealed.

Repeal

Sections 69-4107 to 69-4109 (Secs. 7 to 9, Ch. 197, L. 1967), relating to the ap-

pointment, removal, and powers and duties of the executive officer, were repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4110. Functions, powers, and duties of department. The department shall:

(1) Study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) Make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) At the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) Inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) After each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) Advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) Organize laboratory services and provide equipment and personnel for those services;

(8) Develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) Develop and administer a program to protect the health of mothers and children;

(10) Conduct health education programs;

(11) Supervise school and local public health nurses in the performance of their duties;

(12) Consult with the superintendent of public instruction on health measures for schools;

(13) Develop and administer a program for services to handicapped children including diagnosis, medical, surgical and corrective treatment, and after-care and related services;

(14) Supervise local boards of health;

(15) Bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) Accept and expend federal funds available for public health services;

(17) Have the power to use personnel of local departments of health to assist in the administration of laws relating to public health; and

(18) Adopt rules imposing fees for the tests and services performed by the laboratory of the department. In adopting a rule imposing fees, the department may establish only a fee that will reimburse the department for the costs incurred in performing tests and services. All fees shall be deposited in the general fund.

History: En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977.

Amendments

The 1974 amendment deleted "With policy guidance of the state board" at the beginning of the section; deleted a subdivision which read: "establish divisions, sections, or units which are necessary to

carry out the responsibilities of the department"; added subdivision (17); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "commissioner of higher education" in subdivision (5) for "executive secretary of the Montana university system"; added subdivision (18); and made minor changes in punctuation.

69-4110.1. Comprehensive state health planning powers, etc.

Compiler's Notes

Section 109, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state department of health."

69-4111. Legal adviser to state board and department—injunction. (1)

The attorney general is legal adviser to the board and department. If the county attorney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate him from appropriations to the department. Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the board or the department, the department may through the attorney general or appropriate county attorney sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the board or department.

History: En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977.

partment" for "state board" in three places and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

The 1977 amendment added subsection (2); and made minor changes in phraseology and punctuation.

69-4112. Quarantine measures—adoption and enforcement. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Receipts from fines shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974.

proval of the state board" at the beginning of the section and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment deleted "With ap-

69-4113. Repealed.

Repeal

Section 69-4113 (Sec. 13, Ch. 197, L. 1967), relating to the authority of the ex-

ecutive officer to act for the board in emergency, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4116. Repealed.**Repeal**

Section 69-4116 (Sec. 16, Ch. 197, L. 1967), requiring administration of phenyl-

ketonuria tests to newborn infants, was repealed by Sec. 6, Ch. 227, Laws 1973. For new law, see secs. 69-6710 to 69-6713.

69-4117. Repealed.**Repeal**

Section 69-4117 (Sec. 17, Ch. 197, L. 1967; Sec. 20, Ch. 366, L. 1969; Sec. 12, Ch. 226, L. 1974; Sec. 34, Ch. 349, L.

1974), relating to rules for lighting, heating, ventilation, and sanitation of schoolhouses, was repealed by Sec. 16, Ch. 504, Laws 1977.

69-4118. Sanitary inspections of schoolhouses, churches, jails and other facilities for assemblages of persons. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the department or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967; amd. [Sec. 1], Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974.

The 1974 amendment substituted "department" for "state board" in subsection (2).

Amendments

The 1971 amendment inserted "jails" in the first sentence of subsection (1).

CHAPTER 42—OCCUPATIONAL HEALTH**Section**

- 69-4206. Short title.
- 69-4207. Declaration of policy and purpose.
- 69-4208. Definitions.
- 69-4209. Administration.
- 69-4211. Powers of board.
- 69-4211.1. Powers of department.
- 69-4212. Permits.
- 69-4213. Inspection.
- 69-4214. Emissions prohibited.
- 69-4215. Enforcement.
- 69-4216. Emergency procedure.
- 69-4217. Variances.
- 69-4218. Hearings and judicial review.
- 69-4219. Confidentiality of records.
- 69-4220. Application for federal aid.
- 69-4221. Penalties.

69-4201 to 69-4203. Repealed.**Repeal**

Sections 69-4201 to 69-4203 (Secs. 19 to 21, Ch. 197, L. 1967), relating to duties and powers of the state department of

health with respect to occupational diseases, were repealed by Sec. 18, Ch. 316, Laws 1971. For present law, see section 69-4206 et seq.

69-4205. Repealed.**Repeal**

Section 69-4205 (Sec. 23, Ch. 197, L. 1967), providing a penalty, was repealed

by Sec. 18, Ch. 316, Laws 1971. For present law, see sec. 69-4221.

69-4206. Short title. This act shall be known and may be cited as the "Occupational Health Act of Montana."

History: En. Sec. 1, Ch. 316, L. 1971.

Title of Act

An act providing for the conservation of the health of workers of the state;

providing for prevention, abatement, and control of occupational diseases; providing penalties for violation; and repealing sections 69-4201, 69-4202, 69-4203, and 69-4205, R. C. M., 1947.

69-4207. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such conditions at the work place as will protect human health and safety, and to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this act to provide for a co-ordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and to provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 316, L. 1971.

69-4208. Definitions. Unless the context requires otherwise, in this act:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Emission" means a release into the workspace atmosphere of air contaminants or pollutants.

(3) "Occupational disease" means an illness, impairment or disability that:

(a) Arises from the person's employment.

(b) Is caused by exposure to a substance or industrial practice which is hazardous to health.

(c) Has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases.

(d) Is not the result of a person's contact or activities outside his employment.

(4) "Worker" is a person gainfully employed at any place.

(5) "Work place" is a place or location where a person is gainfully employed.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Threshold limit values" means airborne concentrations of substances which it is believed that nearly all workers may be repeatedly exposed to day after day without adverse effect.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(11) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(12) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

History: En. Sec. 3, Ch. 316, L. 1971; amd. Sec. 35, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department of health and environmental sciences, provided for in Title 82A, chapter 6" for "Montana state department of

health" in subdivision (10); substituted "board of health and environmental sciences, provided for in section 82A-605" for "Montana state board of health" in subdivision (11); deleted definitions of "Advisory committee," "Director," and "Executive officer," and made minor changes in phraseology and punctuation.

69-4209. Administration. Except as otherwise provided, the department is responsible for administration of this act.

History: En. Sec. 4, Ch. 316, L. 1971; amd. Sec. 36, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted the present section for one which read: "Except as otherwise provided, the department, acting under the guidance of the board as to matters of policy, is responsible for administration of the provisions of this act. The executive officer shall appoint a director of the occupational health program to perform the duties and powers

conferred upon the department by this act. The director shall meet requirements established by the board. The executive officer may delegate to any employee of the department such duties and functions as he deems necessary for the proper and efficient administration of this act, and the executive officer shall have the authority with the approval of the board and within the limitation of funds, to hire additional employees and to discharge same for cause."

69-4210. Repealed.

Repeal

Section 69-4210 (Sec. 5, Ch. 316, L. 1971), relating to the creation and membership

of the occupational health advisory committee, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4211. Powers of board. The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place designated by the board. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to carry out this act.

(4) Require access to records relating to emissions.

(5) Establish threshold limit values of airborne contaminants for the state as a whole.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974.

for "director" in two places in subsection (2); deleted subdivisions stating specific powers now assigned to the department by section 69-4211.1; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "director of health and environmental sciences"

69-4211.1. Powers of department. The department shall:

(1) Enforce board orders by appropriate administrative and judicial proceedings.

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease.

(4) Encourage voluntary co-operation by persons and affected groups to achieve the purpose of this act.

(5) Encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control.

(6) Determine by means of field studies and sampling the degree of health hazard at any work place in the state.

(7) Collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases.

(8) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups.

(9) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States for the purpose of carrying out this act. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

History: En. 69-4211.1 by Sec. 38, Ch. 349, L. 1974.

69-4212. Permits. (1) The board may, by rule or regulation, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit therefor has been obtained from it.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application therefor, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971.

69-4213. Inspection. (1) The department may enter and inspect, at a reasonable time, property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this act and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971; amd. Sec. 39, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "The department" for "Any duly authorized

officer, employee, or representative of the board" at the beginning of subsection (1); substituted "the department" for "any authorized representative of the board" in subsection (2); and made minor changes in phraseology and punctuation.

69-4214. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule or regulation.

History: En. Sec. 9, Ch. 316, L. 1971.

69-4215. Enforcement. (1) When the department has reason to believe that a violation of this act or rule made under this act has occurred, it may have written notice served on the alleged violator, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than thirty (30) days after the date of notice is received, the person named requests in writing a hearing before the board. On receipt of a request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that a violation has occurred, it shall either affirm or modify an order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator appear before it for a hearing at a time and place specified in a notice, and answer the charges complained of; or

(b) Initiate action under section 69-4221.

(4) This act does not prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties.

History: En. Sec. 10, Ch. 316, L. 1971;
amd. Sec. 40, Ch. 349, L. 1974.

partment" for "director" in the first sentence of subsection (1) and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

69-4216. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than seventy-two (72) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition as that referred to in subsection (1) of this section, if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard to section 69-4215. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in section 69-4215 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971;
amd. Sec. 41, Ch. 349, L. 1974.

ences to "department" for references to "director" in subsections (1) and (2) and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted refer-

69-4217. Variances. (1) Any person who owns or is in control of any plant, building, structure process or equipment may apply to the board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker.

(b) Compliance with the rules and regulations from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, and the worker or workers involved.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 13 [69-4218] of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 11 [69-4216] of this act to any person or his property.

History: En. Sec. 12, Ch. 316, L. 1971.

69-4218. Hearings and judicial review. (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for the hearing.

(2) Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to section 69-4216.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

(a) The board acted without or in excess of its powers.

(b) The order was procured by fraud.

(c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

History: En. Sec. 13, Ch. 316, L. 1971; amd. Sec. 42, Ch. 349, L. 1974.

Amendments

The 1974 amendment deleted "and after the advisory committee has been afforded not less than thirty (30) days prior to publication of the proposed text to com-

ment thereon" at the end of the first sentence in subsection (1); deleted provisions pertaining to appeals to the district court from denial of an application for rehearing or from a decision on rehearing and to appeals from the district court decision to the supreme court and made minor changes in phraseology.

69-4219. Confidentiality of records. (1) Records or other information concerning pollutants or operations which are furnished to or obtained by the board or department, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, are only for the confidential use of the board or department in the administration of this act, unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition at the work place, if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 14, Ch. 316, L. 1971; amd. Sec. 43, Ch. 349, L. 1974.

partment" after "board" in subsections (1) and (2) and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment inserted "or de-

69-4220. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

History: En. Sec. 15, Ch. 316, L. 1971.

69-4221. Penalties. (1) A person who violates this act relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this act) is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1,000). Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this act, or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This act does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971; amd. Sec. 44, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" in the second sentence of subsection (2) and made minor changes in phraseology and punctuation.

Separability Clause

Section 17 of Ch. 316, Laws 1971 read "Severability. It is the intent of the legislative assembly that if a part of this act

is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 18 of Ch. 316, Laws 1971 read "Sections 69-4201, 69-4202, 69-4203 and 69-4205, R. C. M., 1947, are hereby repealed."

CHAPTER 43—TUBERCULOSIS CONTROL

Section

- 69-4304. Functions, powers, and duties of department.
69-4316. Transportation expenses—payment by county.
69-4317. Facilities for diagnosis and treatment of tuberculosis.

69-4303. Rules for determination of tuberculosis, etc.

Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

69-4304. Functions, powers, and duties of department. (1) The department shall;

(a) Accept, spend, and distribute federal funds available for tuberculosis control;

(b) Collect and study data on the incidence of tuberculosis.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Sec. 27, Ch. 197, L. 1967; amd. Sec. 45, Ch. 349, L. 1974.

caption and in subsections (1) and (2); deleted "under policy guidance of the state board" at the beginning of subsection (1); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "department" for "state department" in the

69-4306. Application to require examination, etc.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state board."

69-4316. Transportation expenses—payment by county. Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed. The charge for care, treatment, and maintenance at Galen state hospital shall be at the rate fixed by law.

History: En. Sec. 39, Ch. 197, L. 1967; amd. Sec. 46, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "Galen state hospital" for "The state pulmonary disease hospital" in the second sentence.

69-4317. Facilities for diagnosis and treatment of tuberculosis. Galen state hospital shall maintain facilities to carry out this chapter.

History: En. Sec. 40, Ch. 197, L. 1967;
amd. Sec. 47, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "Galen

state hospital" for "The state pulmonary disease hospital" at the beginning of the section and made a minor change in phraseology.

CHAPTER 44—VITAL STATISTICS

Section

69-4401. Definitions.

69-4404. Disclosure of data in vital statistics records—inspection of records.

69-4405. Disclosure of information to governmental agencies.

69-4409. Local registrars—appointment—supervision.

69-4420. Substitute birth certificate—procedure for issuance.

69-4421. Substitute birth certificate—procedure for recording.

69-4428.1. Disinterment permit.

69-4401. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

(2) to (4) * * * [Same as parent volume.]

(5) "Person in charge of interment" means a person who places or causes to be placed, a dead body or the ashes after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes of the body.

(6) "Physician" means a person legally authorized to practice medicine in this state.

(7) "Local registrar" means a person appointed by the department of health and environmental sciences to act as its agent in administering this chapter in the area set forth in the letter of appointment.

History: En. Sec. 41, Ch. 197, L. 1967;
amd. Sec. 48, Ch. 349, L. 1974.

ment of health and environmental sciences" for "state registrar" in the definition of "Local registrar" in subdivision (7); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment deleted a definition of "State registrar"; substituted "depart-

mental sciences" in this section for "state board of health."

69-4402. State-wide system of vital statistics established, etc.

Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

69-4403. Functions, powers and duties of state department of health.

Compiler's Notes

Sections 107 and 109, Ch. 349, Laws 1974, substituted "department" throughout

this section for "state board" and "state department of health."

69-4404. Disclosure of data in vital statistics records—inspection of records. It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the department. The department may not permit inspection of the records or issue copies of a certificate unless

it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state board" at the end of the first sentence; substituted "depart-

ment" for "state registrar" in the second sentence; deleted a sentence at the end of the section which read: "His decision is subject to review by the state board or a court"; and made minor changes in phraseology and punctuation.

69-4405. Disclosure of information to governmental agencies. The board may direct the department to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board. If no identification of individuals is made, the board may permit the use of data contained in vital statistics records for research purposes.

History: En. Sec. 45, Ch. 197, L. 1967; amd. Sec. 50, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "board"

for "state board" throughout the section; substituted "department" for "state registrar" in the first sentence; and made a minor change in phraseology.

69-4406. Certified copy of certificate—effect of.

Compiler's Notes

Section 110, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state registrar."

69-4407. Certified copy of certificate—fee.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state board."

69-4409. Local registrars—appointment—supervision. The department shall:

- (1) Appoint local registrars;
- (2) Supervise local registrars and other persons required to comply with this act.

History: En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "The

department" for "The state registrar" at the beginning of the section; deleted "with approval of the state board" at the beginning of subdivision (1); and made minor changes in phraseology and punctuation.

69-4410 to 69-4414.

Compiler's Notes

Sections 107 and 110, Ch. 349, Laws 1974, substituted "department" throughout these

sections for "state board" and "state registrar."

69-4416 to 69-4418.

Compiler's Notes

Sections 107 and 110, Ch. 349, Laws 1974, substituted "department" through-

out these sections for "state board" and "state registrar."

69-4420. Substitute birth certificate—procedure for issuance. The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(1) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department; or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(2) The department shall prepare a substitute certificate containing:

(a) the new name of the adopted person;

(b) the true date and place of birth and sex of the adopted person;

(c) statistical facts concerning the adoptive parents in place of the natural parents;

(d) the words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(e) dates of recording as shown on the original birth certificate.

History: En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977.

ment of health and environmental sciences" for "state registrar" in subdivision (2)(d); and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "department" for "state registrar" at the end of subdivision (1) and at the beginning of subdivision (2); substituted "depart-

The 1977 amendment added the material following the semicolon in subdivision (1); and made minor changes in phraseology, punctuation and style.

69-4421. Substitute birth certificate—procedure for recording. (1) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder;

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department;

(c) The department shall seal original birth records and open them only on demand of the adopted person if of legal age, or on order of a court.

(2) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder.

History: En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974.

partment" for "state registrar" throughout the section and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

69-4423. Proof of legitimation, etc.

Compiler's Notes

Section 110, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state registrar."

69-4425. Death certificate—preparation and filing.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state board."

69-4428.1. Disinterment permit. (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from

the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department of health and environmental sciences, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

History: En. Sec. 1, Ch. 481, L. 1973;
amd. Sec. 19, Ch. 187, L. 1977.

Amendments

The 1977 amendment substituted "precondition" for "right" in the second sentence of subsection (2); and made minor changes in punctuation and phraseology.

Title of Act

An act providing for permits for disinterments of dead bodies and for administration by the department of health and environmental sciences.

69-4431 to 69-4435.

Compiler's Notes

Sections 107 and 110, Ch. 349, Laws 1974, substituted "department" throughout these

sections for "state board" and "state registrar."

CHAPTER 45—LOCAL BOARDS OF HEALTH

Section

- 69-4502. General supervision by department of health and environmental sciences.
- 69-4503. Federal funds—acceptance—allocation.
- 69-4504. County boards of health.
- 69-4508. Financing of local boards of health—appropriations—tax levies.
- 69-4508.1. Legal adviser.
- 69-4509. Functions, powers and duties of local boards of health.
- 69-4510. Local health officers—powers and duties.
- 69-4519. Penalty.

69-4502. General supervision by department of health and environmental sciences. The department of health and environmental sciences has general supervision over local boards.

History: En. Sec. 79, Ch. 197, L. 1967;
amd. Sec. 54, Ch. 349, L. 1974.

which read: "With approval of the state board of health, the state department of health has general supervision over local boards."

Amendments

The 1974 amendment rewrote this section

69-4503. Federal funds—acceptance—allocation. The department may accept funds for public health from an agency of the federal government, or from any other agency or person, and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967;
amd. Sec. 55, Ch. 349, L. 1974.

proval of the state board" at the beginning of the section and substituted "department" for "executive officer of the state department of health."

Amendments

The 1974 amendment deleted "With ap-

69-4504. County boards of health. There is a county board of health in each county consisting of:

(1) the county commissioners and two members who are appointed by the county commissioners and serve at their pleasure; or

(2) five persons who are appointed by the county commissioners and serve at their pleasure. Terms of appointed members shall be staggered

and be for 3 years each. The county commissioners shall establish the staggered order of terms and all rules necessary to establish and maintain the board.

History: En. Sec. 81, Ch. 197, L. 1967; amd. Sec. 1, Ch. 216, L. 1969; amd. Sec. 20, Ch. 187, L. 1977.

Amendments

The 1977 amendment substituted "rules" for "regulations" in the last sentence of subdivision (2); and made minor changes in style and phraseology.

69-4508. Financing of local boards of health—appropriations—tax levies. (1) Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) Appropriations are made as follows:

(a) County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 16, chapter 19.

(b) City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 11, chapter 14.

(c) If a city-county board is created, it is financed by one of the following methods:

(i) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses. The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 16, chapter 19. Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 11, chapter 14. All moneys shall be deposited with the county treasurer who shall disburse them as county funds.

(ii) In first and second class counties, the county commissioners and governing body of each participating city may mutually agree upon the division of the expenses. The county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 16, chapter 19. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund. Each participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 11, chapter 14. All moneys shall be deposited with the county treasurer who shall disburse them as county funds. The special levies authorized by this subsection are in addition to all other levies authorized by law.

(d) District boards are financed by appropriations from the general funds of each county in the district in proportion to the population in each

county. First and second class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under subsection (2)(c) of this section. All funds shall be deposited with the county treasurer of one of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

(3) School boards and other official and nonofficial agencies may contribute funds to a local board.

(4) If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This subsection does not apply when the board has been financed under subsection (2)(c)(ii) of this section.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977.

the provision designated as subdivision (2)(c)(ii); and added the last sentence in subsection (4).

The 1977 amendment made minor changes in style, punctuation and phraseology.

Amendments

The 1974 amendment inserted "special levy appropriations" in subsection (1); inserted the subdivision designation (2)(c)(i); substituted "may mutually agree" for "shall mutually agree" in the first sentence in subdivision (2)(c)(i); inserted

Effective Date

Section 2 of Ch. 351, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

69-4508.1. Legal adviser. The county attorney shall serve as legal adviser to local boards as established by sections 69-4504 and 69-4506, R. C. M. 1947. The county attorney shall represent the local board in those matters relating to the functions, powers and duties of local boards.

History: En. 69-4508.1 by Sec. 1, Ch. 273, L. 1975.

day of violation a separate offense, permitting injunctive action; and creating a new section providing for county attorney to serve as legal adviser for local boards of health.

Title of Act

An act to amend sections 69-4509 and 69-4519, R. C. M. 1947, by declaring each

69-4509. Functions, powers and duties of local boards of health. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or equivalent and appropriate experience as determined by the department and fix his salary;

(b) to (h) * * * [Same as parent volume.]

(2) Local boards may

(a) to (h) * * * [Same as parent volume.]

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) * * * [Same as parent volume.]

(k) adopt rules, which do not conflict with rules adopted by the department:

(i) to (iv) * * * [Same as parent volume.]

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111,

Ch. 349, L. 1974; amd. Sec. 2, Ch. 273, L. 1975.

Amendments

The 1971 amendment inserted "or a person with a master's degree in public health or equivalent and appropriate experience as determined by the executive officer" in subdivision (1)(a).

The 1974 amendment substituted "department" for "executive officer" in sub-

division (1)(a) and substituted "department" for "state board" in subdivision (2)(k).

The 1975 amendment added "or bring action necessary to restrain the violation of public health laws or rules" to the end of subdivision (2)(i); and made minor changes in punctuation.

69-4510. Local health officers—powers and duties. (1) Local health officers, or their authorized representatives, shall:

- (a) Make inspections for sanitary conditions;
- (b) As directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;
- (c) With written approval of the department, order buildings or facilities where people congregate closed during epidemics;
- (d) On forms provided by the department, report communicable diseases to the department each week;
- (e) Before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities on forms and containing information required by the department;
- (f) Before the tenth day after the report is given to the local board, send a copy of the report required by subsection (1) (e) of this section to the department;
- (g) As prescribed by rules adopted by the department, establish and maintain quarantines;
- (h) As prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;
- (i) Notify the department of his appointment and changes in membership of the local board;
- (j) File a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer, who is a physician, may be placed in charge of a communicable disease hospital, but a local health officer, who is a physician, is not required to act as a physician to the indigent. A local health officer, who is not a physician, shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974.

Amendments

The 1971 amendment inserted "who is a physician" in two places in the first sentence of subsection (3); added the second sentence to subsection (3); and made minor changes in phraseology and punctuation.

The 1974 amendment substituted "department" for "executive officer" in subdivisions (1)(c) and (1)(d) and in subsection (2); substituted "department" for "state board" in subdivisions (1)(g), (1)(h), and (1)(j); substituted "department" for "state health department" in subdivision (1)(i); and made minor changes in phraseology and punctuation.

69-4511. Local health officers—appointment.

Compiler's Notes

Section 108, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state board."

69-4519. Penalty. (1) and (2) * * * [Same as parent volume.]

(3) Except as provided in subsections (1) and (2) of this section, a person who violates the provisions of this chapter, or rules adopted by the department under the provisions of this chapter, is guilty of a misdemeanor. On conviction, he shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500), imprisoned for not more than ninety (90) days, or both.

(4) Each day of violation constitutes a separate offense. Fines shall be paid to the county treasurer of the county in which the violation occurs.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975.

Amendments

The 1974 amendment substituted "department" in subsection (3) for "state board."

The 1975 amendment added subsection (4).

CHAPTER 46—VENEREAL DISEASE

Section

69-4602. Education campaigns by department of health and environmental sciences—co-operation with federal agencies—use of federal funds.

69-4603. Acceptance and disbursement of federal funds for control of venereal disease.

69-4610. Information concerning infected persons—release.

69-4602. Education campaigns by department of health and environmental sciences—co-operation with federal agencies—use of federal funds.

The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose. The department shall co-operate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of venereal diseases.

History: En. Sec. 98, Ch. 197, L. 1967; amd. Sec. 57, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department of health and environmental sci-

ences" for "state department of health" in the caption and in the first sentence; deleted "Under policy guidance of the state board of health" at the beginning of the first sentence; and made minor changes in phraseology and punctuation.

69-4603. Acceptance and disbursement of federal funds for control of venereal disease. The department may accept federal funds available for the prevention, control, and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds.

History: En. Sec. 99, Ch. 197, L. 1967; amd. Sec. 58, Ch. 349, L. 1974.

Amendments

The 1974 amendment deleted "With approval of the state board" at the begin-

ning of the section; substituted "department" for "the executive officer of the state department of health"; and made minor changes in phraseology and punctuation.

69-4610. Information concerning infected persons—release. Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

- (1) personnel of the department; or
- (2) a physician who has written consent of the person whose record is requested.

For the purposes of this section the term "information" includes all knowledge or intelligence, and all communications of all knowledge or intelligence, oral or written, or in record form, and also includes, but is not limited to, information concerning the location or nature of the activities or work of all local, state, or federal employees, or officers, engaged in venereal disease eradication work, and such personnel are privileged and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work. The purpose of this section is to protect and preserve the principle of confidentiality in venereal disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all venereal disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

History: En. Sec. 106, Ch. 197, L. 1967; amd. Sec. 1, Ch. 135, L. 1971; amd. Sec. 109, Ch. 349, L. 1974.

The 1974 amendment substituted "department" for "state department of health" in clause (1).

Amendments

The 1971 amendment added the paragraph following the numbered clauses.

69-4612 to 69-4615. Repealed.

Repeal

Sections 69-4612 to 69-4615 (Secs. 108 to 111, Ch. 197, L. 1967), relating to test-

ing of pregnant women for syphilis, were repealed by Sec. 11, Ch. 228, Laws 1973. For new law, see secs. 69-6701 to 69-6709.

69-4616, 69-4617.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in these sections for "state board."

CHAPTER 47—SHODDY CONTROL

69-4702. Label required.

Compiler's Notes

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

69-4703, 69-4704.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" throughout these sections for "state board."

69-4705. Inspections by health authorities.

Compiler's Notes

Sections 107 and 109, Ch. 349, Laws 1974, substituted "department" throughout this

section for "state board" and "state department of health."

69-4706. Condemnation of mattresses unlawfully made.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in this section for "state board."

CHAPTER 48—WATER POLLUTION

- Section**
 69-4801. Public policy of the state.
 69-4802. Definitions.
 69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned.
 69-4805. Administration of chapter.
 69-4806. Pollution unlawful—permits.
 69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date.
 69-4808.1. Board to control state matching funds for construction of water pollution control facilities—limit on funds.
 69-4808.2. Duties of board.
 69-4808.3. Department of health and environmental sciences to administer funds aiding local governments—limit and conditions of funds.
 69-4808.4. Rates and charges to meet costs of treatment works—use of funds—enforcement.
 69-4808.5. Determination of costs payable by users.
 69-4809.1. Duties of department.
 69-4809.2. Power to inspect and monitor—authority.
 69-4812. Water pollution control advisory council—officers—meetings—designating of deputy by member.
 69-4814. Hearings by board—notice.
 69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing.
 69-4820.1. Additional sanctions authorized.
 69-4821. Judicial remedies—review by district court.
 69-4822. Confidentiality of records.
 69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order—purpose and construction of chapter.
 69-4824. Emergencies.
 69-4824.1. Additional emergency powers.
 69-4825. Injunctions.
 69-4826. Action by other parties.
 69-4827. Co-operation with the council, board, and department.

69-4801. Public policy of the state. (1) * * * [Same as parent volume.]

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream as long as the minimum treatment requirements established under this chapter are met. "Natural" refers to conditions or material present from runoff or percolation over which man has no control or from developed land where all reasonable land, soil and water conservation practices have been applied. Conditions resulting from the reasonable operation of dams at the effective date of this act are "natural."

History: En. Sec. 121, Ch. 197, L. 1967; amd. Sec. 1, Ch. 21, L. 1971; amd. Sec. 1, Ch. 455, L. 1975.

Amendments

The 1971 amendment substituted the second and third sentences of subsection (2) for "However, municipal or industrial

pollution upstream shall not be considered natural."

The 1975 amendment added "as long as the minimum treatment requirements established under this chapter are met" to the end of the first sentence in subsection (2); and inserted "the reasonable operation of" in the last sentence of subsection (2).

69-4802. Definitions. Unless the context requires otherwise in this chapter the following definitions apply:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present.

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration or flow of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes.

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works.

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607.

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source.

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into state waters.

History: En. Sec. 122, Ch. 197, L. 1967; amd. Sec. 2, Ch. 21, L. 1971; amd. Sec. 1, Ch. 506, L. 1973; amd. Sec. 59, Ch. 349, L. 1974; amd. Sec. 2, Ch. 455, L. 1975; amd. Sec. 3, Ch. 308, L. 1977; amd. Sec. 1, Ch. 444, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 308 and once by Ch. 444. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment inserted "dead animals, sediment" in subdivision (3); redefined the meaning of pollution in subdivision (5); added the exception pertaining to irrigation waters at the end of subdivision (9); and added definitions of "Council," "Board," "Department," "Executive officer," "Director," and "Local department of health."

The 1973 amendment added definitions of "Point source," "Owner or operator," "Standard of performance," and "Effluent standard."

The 1974 amendment substituted "however, this subsection does not apply to irrigation waters" for "this section shall not

apply to irrigation waters" in subdivision (9); substituted "state water pollution control advisory council provided for in section 82A-607" for "state water pollution advisory council" in subdivision (11); substituted "board of health and environmental sciences, provided for in section 82A-605" for "state board of health" in subdivision (12); substituted "department of health and environmental sciences provided for in Title 82A, chapter 6" for "state department of health" in subdivision (13); deleted definitions of "Executive officer" and "Director"; and made minor changes in phraseology and punctuation.

The 1975 amendment inserted "grease," "heat," and "wrecked or discarded equipment, radioactive materials, solid waste" in subdivision (3); substituted "authorized under the pollution discharge permit rules of the board" for "permitted by Montana water quality standards" near the end of subdivision (5); and made minor changes in punctuation.

Chapter 308, Laws of 1977, added "and includes persons resident in Canada" to subdivision (10).

Chapter 444, Laws of 1977, inserted "seepage, drainage, infiltration or flow" in each sentence of subdivision (5); and made minor changes in phraseology and punctuation.

69-4803. Repealed.

Repeal

Section 69-4803 (Sec. 123, Ch. 197, L. 1967), relating to classification of waters

for industrial use, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4804. Chapter applicable to drainage or seepage from artificial bodies of water privately owned. This chapter applies to drainage or seepage from all sources including that from artificial, privately owned ponds or lagoons if such drainage or seepage may reach other state waters in a condition which may pollute the other state waters.

History: En. Sec. 124, Ch. 197, L. 1967; amd. Sec. 3, Ch. 21, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior version, see parent volume.

69-4805. Administration of chapter. (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use its personnel and those of the local departments of health as necessary to administer this act.

History: En. Sec. 125, Ch. 197, L. 1967; amd. Sec. 4, Ch. 21, L. 1971; amd. Sec. 60, Ch. 349, L. 1974.

Amendments

The 1971 amendment completely rewrote this section. For previous text, see parent volume.

The 1974 amendment rewrote this section. Prior to amendment it read: "Except as otherwise provided, the department, acting under the supervision of the board as to matters of policy, is responsible for administration of the provisions of this chapter.

"The executive officer shall appoint a director of water pollution control to perform the duties and powers conferred upon the department by this act. The director shall meet requirements established by the

board. The director shall have a minimum of five (5) years of responsible experience in water pollution control or aquatic ecology programs. His salary shall be set in accord with other members of the staff with the same degree of responsibility and training. He will be responsible for the administration of the water pollution control act within the limitations of funds and personnel assigned.

"The executive officer shall, in the absence of a director of water pollution control, assign another member of the staff to perform the duties and exercise the powers of a director.

"The department may use personnel of the state and local departments of health as necessary to administer the provisions of this act."

69-4806. Pollution unlawful—permits. It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R. C. M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters;

(3) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained therein;

(4) violate any order issued pursuant to this chapter; or

(5) violate any provision of this chapter.

History: En. Sec. 126, Ch. 197, L. 1967; amd. Sec. 5, Ch. 21, L. 1971; amd. Sec. 3, Ch. 455, L. 1975; amd. Sec. 2, Ch. 444, L. 1977.

Amendments

The 1971 amendment combined former paragraphs (2) (a) and (2) (b) into new paragraph (2) (a); deleted a paragraph

(2) (c) reading "increase the volume or strength of sewage, industrial wastes, or other wastes in excess of the permissive discharges specified under any existing permit"; redesignated former paragraph (2) (d) as (2) (b); deleted "new" before "outlet" in present paragraph (2) (b); added subdivision (3); and made minor changes in phraseology and style.

The 1975 amendment added subdivision (2)(c); and made minor changes in punctuation.

The 1977 amendment substituted subdivision (3) for "violate any limitation imposed by a current permit"; added subdivisions (4) and (5); and made minor changes in phraseology.

Violation of Permit

Failure by city to notify the depart-

ment of health and environmental sciences and the federal environmental protection agency of its bypass of raw sewage away from treatment plant into Yellowstone River, in violation of its permit to make limited discharges, was not actionable under this section where state and federal agencies had actual notice of the discharges. *State ex rel. Department of Health & Environmental Sciences v. City of Livingston*, — M —, 548 P 2d 155.

69-4807. Repealed.

Repeal

Section 69-4807 (Sec. 127, Ch. 197, L. 1967; Sec. 1, Ch. 277, L. 1969), relating to

issuance and revocation of permits, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4807.1. Denial, modification, suspension, and revocation of permit—notice—hearing—effective date. (1) If the department denies an application for a permit or modifies a permit, the department shall give written notice of its action to the applicant or holder, and he may request a hearing before the board, in the manner stated in section 13 [69-4820] of this act, for the purpose of petitioning the board to reverse or modify the action of the department. Such hearing shall be held within thirty (30) days after receipt of written request. After the hearing, the board shall affirm, modify, or reverse the action of the department. Modification of a permit shall be effective thirty (30) days after receipt of notice by the holder, unless the department specifies a later date, if the holder does not request a hearing before the board. If the holder does request a hearing before the board, no order modifying his permit shall be effective until twenty (20) days after he has received notice of the action of the board. This subsection does not apply to any modification made in permit conditions at the time of reissuance but only to those modifications made in existing permits during their terms.

(2) If the department suspends or revokes a permit because it has reason to believe that the holder has violated this chapter, the department may specify that the suspension or revocation is effective immediately, if the department finds that the violation is likely to continue and will cause pollution the harmful effects of which will not be remedied immediately on the cessation of the violation. Upon petition by the holder of the permit, the board shall grant the holder a hearing, to be conducted in the manner specified in section 13 [69-4820] of this act and shall issue an order affirming, modifying, or reversing the action of the department. The order of the board shall be effective immediately, unless the board directs otherwise.

History: En. Sec. 14, Ch. 21, L. 1971; amd. Sec. 4, Ch. 455, L. 1975.

Title of Act

An act to revise the Water Pollution Control Act by placing administration of the act with the department of health under policy guidance from the board of health; redefining the meaning of pollution; broadening the activities under

which a permit must be gained under section 69-4806, R. C. M. 1947; defining the duties of the board of health and department of health; including as a member of the state water pollution advisory council, the commissioner of agriculture, deleting representative of agriculture, adding a livestock feeder, a representative from labor, a supervisor of a soil and water conservation district, a representative of

an organization concerned with water recreation and a representative of an organization concerned with fishing for sport; changing the name of the state water pollution control council to the state water pollution advisory council and redefining its function; providing for a director of water pollution control; enacting a new hearing and appeals procedure; adopting a new emergencies procedure; amending sections 69-4801, 69-4802, 69-4804, 69-4805, 69-4806, 69-4810, 69-4811, 69-4812, 69-4813,

and 69-4814, R. C. M. 1947, and repealing sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818 and 69-4819, R. C. M. 1947.

It is the intent of the Montana legislative assembly that all provisions of this act be codified in Title 69, chapter 48, R. C. M. 1947.

Amendments

The 1975 amendment added the last sentence to subsection (1).

69-4808. Repealed.

Repeal

Section 69-4808 (Sec. 128, Ch. 197, L. 1967), relating to duties of the state board

of health, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4808.1. Board to control state matching funds for construction of water pollution control facilities—limit on funds. (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities. The board shall adopt rules and establish standards for the use of such matching funds, by local governments, in the planning and construction of local water pollution control facilities.

(2) Funds appropriated under this act shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and may not exceed twenty-five per cent (25%) of the total cost of the project as participated in by the federal water pollution control administration.

History: En. Sec. 1, Ch. 165, L. 1969; amd. Sec. 61, Ch. 349, L. 1974.

Amendments

The 1974 amendment inserted the nu-

merical subsection designations; substituted "board" for "state board of health" in the caption and in two places in subsection (1); and made minor changes in phraseology and punctuation.

69-4808.2. Duties of board. (1) The board shall:

(a) Establish and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification as follows:

(i) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 69-4814.

(ii) The board shall require that any state waters, whose existing quality is higher than the established water quality standards, be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(iii) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1)(c)(ii), to provide the degree of waste treatment necessary to maintain that existing high water quality.

(d) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

(e) Adopt rules governing the issuance, denial, modification, or revocation of permits as follows:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

(f) Hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

(g) Adopt rules for the administration of this chapter.

(h) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802(18), adopt toxic effluent standards and prohibitions, and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes.

History: En. Sec. 6, Ch. 21, L. 1971; amd. Sec. 2, Ch. 506, L. 1973; amd. Sec. 62, Ch. 349, L. 1974; amd. Sec. 5, Ch. 455, L. 1975; amd. Sec. 3, Ch. 444, L. 1977.

pretreatment standards for waste-water discharged into a municipal disposal system.

The 1974 amendment deleted a provision authorizing the board to "bring actions in court for the enforcement of this chapter" and made numerous minor changes in phraseology and punctuation.

Amendments

The 1973 amendment inserted subdivision (1)(i) authorizing the board to adopt

The 1975 amendment inserted "water quality" before "standards" in subdivision (1)(c)(iii); substituted "if the department ensures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time" in subdivision (1)(f)(ii) for "for a period no longer than three (3) years and subject to no extension, if the department finds that the issuance of a permit is proper for obtaining compliance with the applicable standards"; deleted (1)(f)(iv) which read: "A person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in sections 69-4802 (1), (2), and (3), to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately this classification, as defined in section 69-4802 (7) before the issuance of a permit by the department"; added "or, in the case of permit issuance hearings, delegate this function to the department" to subdivision (1)(g); substituted "section 69-4802 (18)" for "section 69-4802 (20)" in

subdivision (1)(i); inserted "adopt toxic effluent standards and prohibitions" in subdivision (1)(i); and made minor changes in phraseology and punctuation.

The 1977 amendment deleted former subdivision (1) (c) (i) which read: "The classifications, standards, and rules which have been adopted by the state water pollution control council under section 69-4813 are, without necessity of a hearing, initially adopted by the board"; redesignated former subdivisions (1) (c) (ii) through (1) (c) (iv) as subdivisions (1) (c) (i) through (1) (c) (iii); deleted "by the state water pollution control council under section 69-4813" after "standards adopted" in subdivision (1) (c) (i); added the exception to subdivision (1) (c) (i); deleted former subsection (1) (d) which read: "Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution"; redesignated former subdivisions (1) (e) through (1) (i) as subdivisions (1) (d) through (1) (h); and made minor changes in phraseology and style.

69-4808.3. Department of health and environmental sciences to administer funds aiding local governments—limit and conditions of funds. (1) The department of health and environmental sciences is designated as the state agency which shall administer and control all funds to be appropriated for the purpose of aiding local governments not entitled to state matching funds under the provisions of section 69-4808.1 for construction of water pollution control facilities, but which are now, under the provisions of the Federal Water Pollution Control Act amendments of 1972 entitled to reimbursable federal grant funding.

(2) This act applies to only publicly owned treatment works on which construction was initiated after June 30, 1966, but before July 1, 1970.

(3) The department of health and environmental sciences shall promulgate rules for the use of the funds.

(4) Any funds appropriated shall in no case exceed twenty-five per cent (25%) of the total cost of the project.

(5) Nothing in this act shall result in any such project receiving state funds where fund participation from all sources, federal and state, shall be in excess of eighty per cent (80%) of the cost of such project.

History: En. Sec. 1, Ch. 122, L. 1973.

Title of Act

An act designating the department of health and environmental sciences as the agency to administer state funds to be

used for aiding local governments which were not entitled to state matching funds under the provisions of section 69-4808.1, R. C. M. 1947, for construction of water pollution control facilities.

69-4808.4. Rates and charges to meet costs of treatment works—use of funds—enforcement. (1) A municipality or other entities operating a

sewage system may adopt a system of charges and rates to assure that each recipient of treatment works services within the municipality's jurisdiction or service area will pay its proportionate share of the costs of operation, maintenance, and replacement of any treatment works facilities or services provided by the municipality or other entities operating a sewage system.

(2) A municipality or other entities operating a sewage system may require industrial users of its treatment works to pay to the municipality or other entities operating a sewage system that portion of the cost of construction of the treatment works which is allocable to the treatment of such industrial user's wastes. The department of health and environmental sciences may determine whether the payment required of the industrial user for the portion of the cost of the construction of the treatment works is properly allocable to the treatment of the industrial user's wastes.

(3) A municipality or other entities operating a sewage system may retain the amounts of the revenues derived from the payment of costs by industrial users of its treatment works services and expend such revenues, together with interest thereon, for:

(a) repayment to applicable agencies of government of any grants or loans made to the municipality or other entities operating a sewage system for construction of the treatment works; and

(b) future expansion and reconstruction of the treatment works; and

(c) other municipal purposes.

(4) A municipality or other entities operating sewage systems shall keep records, financial statements and books regarding its rates and charges and amounts collected on account of its treatment works and how such revenues are allocated. The department may inspect such records, financial statements and books, audit them, or cause them to be audited, at such intervals as deemed necessary.

(5) In the event a municipality or other entities operating sewage systems fails, neglects or refuses when required by the department to adopt the system of charges and rates authorized by this section, the board may adopt a system of charges and rates as provided for in subsection (1) of this section and collect, administer and apply such revenues for the purposes of subsection (3) of this section.

(6) In lieu of proceeding in the manner set forth in subsection (5) of this section, the department may institute proceedings at law or in equity to enforce compliance with, or restrain violations of this section.

History: En. 69-4808.4 by Sec. 14, Ch. 455, L. 1975.

Title of Act

An act generally revising the water pollution control laws to conform with federal requirements, to improve enforce-

ment procedures, and to provide for user charges for industrial and other users of public sewage treatment systems; amending sections 16-4412, 16-4526, 69-4801, 69-4802, 69-4806, 69-4807.1, 69-4808.2, 69-4809.1, 69-4809.2, 69-4820, 69-4820.1, 69-4822, 69-4823, 69-4825, and 69-4826, R. C. M. 1947.

69-4808.5. Determination of costs payable by users. In determining the amount of treatment works costs to be paid by recipients of treatment works services, the municipality or other entities operating sewage systems or, if applicable, the board shall consider the strength, volume, types and

delivery flow rate characteristics of the waste; the nature, location and type of treatment works; the receiving waters; and such other factors as deemed necessary.

History: En. 69-4808.5 by Sec. 15, Ch. 455, L. 1975.

69-4809. Repealed.

Repeal

Section 69-4809 (Sec. 129, Ch. 197, L. 1967), relating to powers and duties of

the state department of health, was repealed by Sec. 22, Ch. 21, Laws 1971.

69-4809.1. Duties of department. (1) The department shall:

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes into state waters, consistently with rules made by the board;

(b) Examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them;

(g) Take such actions as are authorized or required under section 69-4820.1 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted; and

(h) Advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(2) The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 21, L. 1971; amd. Sec. 3, Ch. 506, L. 1973; amd. Sec. 63, Ch. 349, L. 1974; amd. Sec. 6, Ch. 455, L. 1975; amd. Sec. 4, Ch. 444, L. 1977.

Amendments

The 1973 amendment deleted a subsection (2) granting powers now covered by section 69-4809.2 (2) and granting the power to issue, modify, or revoke abatement orders.

The 1974 amendment made minor changes in phraseology and punctuation.

The 1975 amendment deleted "and approve or disapprove" after "Examine" at the beginning of subdivision (1)(b); and added subdivision (1)(g).

The 1977 amendment added subdivision (1)(h) and subsection (2); and made minor changes in phraseology, punctuation and style.

69-4809.2. Power to inspect and monitor—authority. (1) In order to carry out the objectives of this act and to effectively monitor the discharge

of sewage, industrial wastes and other wastes into state waters, the department may require the owner or operator of any point source, or the owner or operator of any facility that discharges into a municipal sewer system and to which pretreatment standards, promulgated under this chapter apply, to:

- (a) establish and maintain records;
- (b) make reports;
- (c) install, use and maintain monitoring equipment or methods, including biological monitoring techniques;
- (d) sample effluents using specified monitoring methods at designated locations and intervals;
- (e) provide other information as may be reasonably required by the department.

(2) The authorized representative of the department, upon presentation of his credentials, may at reasonable times enter upon any public or private property to:

- (a) investigate conditions relating to pollution of state waters or violations of permit conditions;
- (b) have access to and copy any records required under this act;
- (c) inspect any monitoring equipment or method required under subsection (1) (c); and
- (d) sample any effluents which the owner or operator of such source is required to sample under that subsection.

(3) Any records, reports, or information obtained under this section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards.

History: En. 69-4809.2 by Sec. 4, Ch. 506, L. 1973; amd. Sec. 7, Ch. 455, L. 1975.

Title of Act

An act to grant additional powers to the department of health and environmental sciences relating to acquisition of information and enforcement of remedies for the purpose of complying with the 1972 amendments to the Federal Water Pollution Control Act; and amending sections 69-4802, 69-4808.2, 69-4809.1 and 69-4823, R. C. M. 1947.

Amendments

The 1975 amendment inserted "or the owner or operator of any facility that discharges into a municipal sewer system and to which pretreatment standards, promulgated under this chapter apply" in the first paragraph of subsection (1); divided subsection (2) into subdivisions; inserted subdivision (2)(a); and made minor changes in punctuation.

69-4810, 69-4811. Repealed.

Repeal

Sections 69-4810 and 69-4811 (Secs. 130, 131, Ch. 197, L. 1967; Secs. 8, 9, Ch. 21, L.

1971), relating to the state water pollution advisory council, were repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4812. Water pollution control advisory council—officers—meetings—designating of deputy by member. (1) The council provided for in section 82A-607 shall select a chairman from among its members. The director of health and environmental sciences shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two (2) regular meetings each calendar year. Special meetings shall be held at the call of the chairman or on written request of two (2) or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

(4) The council shall only act in an advisory capacity to the department on matters relating to water pollution.

History: En. Sec. 132, Ch. 197, L. 1967; amd. Sec. 10, Ch. 21, L. 1971; amd. Sec. 64, Ch. 349, L. 1974.

Amendments

The 1971 amendment substituted "member of the staff of the department of health" for "member of the public health engineering staff of the department."

The 1974 amendment substituted "Water pollution control advisory council" for

"State water pollution advisory council" in the caption; inserted "provided for in section 82A-607" in the first sentence of subsection (1); substituted "director of health and environmental sciences" for "executive officer" in the second sentence of subsection (1); deleted "A majority of the members is a quorum" at the end of subsection (2); added subsection (4); and made minor changes in phraseology and punctuation.

69-4813. Repealed.

Repeal

Section 69-4813 (Sec. 133, Ch. 197, L. 1967; Sec. 11, Ch. 21, L. 1971), relating to

powers and duties of the state water pollution advisory council, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-4814. Hearings by board—notice. Before streams are classified or standards established or modified, or rules made, revoked or modified, the board shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards or modification of them and any rules proposed to be made, revoked or modified shall be published at least once a week for three (3) consecutive weeks in a daily newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the board believes may be affected by the proposed action. The council shall be given not less than thirty (30) days prior to first publication to comment on the proposed action.

At a hearing held under this section, the board shall give all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The board may make rules for the orderly conduct of the hearing but need not require compliance with the rules of evidence or procedure applicable to hearings held under section 13 [69-4820] of this act.

History: En. Sec. 134, Ch. 197, L. 1967; amd. Sec. 12, Ch. 21, L. 1971.

Amendments

The 1971 amendment inserted "or rules made, revoked or modified" in the first and second sentences; inserted "daily" before "newspaper of general circulation";

substituted "board" for "council" in two instances; substituted "proposed action" for "classification or standard" at the end of the second sentence; added the last sentence of the first paragraph and the present second paragraph; and made a minor change in punctuation.

69-4815 to 69-4819. Repealed.

Repeal

Sections 69-4815 to 69-4819 (Secs. 135 to 139, Ch. 197, L. 1967), relating to pro-

cedure for rehearing, appeal and injunction, were repealed by Sec. 22, Ch. 21, Laws 1971.

69-4820. Violation of chapter or rule—notice to violator—hearing before board—notice, procedure, order, rehearing. (1) When the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it may have written notice served personally or by mail on the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department requires, and the time within which the action is to be taken. For the purposes of this chapter, service by mail is complete on the date of mailing.

(2) In a notice given under subsection (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. The hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct the hearing. The request shall be in writing and shall be filed with the department no later than thirty (30) days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held under this section, it shall be public and shall, if the board considers it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(6) In addition to or instead of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under section 69-4823.

History: En. Sec. 13, Ch. 21, L. 1971; amd. Sec. 65, Ch. 349, L. 1974; amd. Sec. 8, Ch. 455, L. 1975.

Amendments

The 1974 amendment substituted "department" for "executive officer" in the second sentence of subsection (3); deleted provisions pertaining to the conduct of the hearing by the board and the attendance of witnesses; deleted a second sentence in subsection (5) which read: "The order shall

be accompanied by a statement of the board's findings, reasons, and conclusions upon all material issues of fact, law, or discretion"; inserted "direct the department to" following "the board may" in subsection (6); and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "may have written notice" for "shall have written notice" in the first sentence of subsection (1).

69-4820.1. Additional sanctions authorized. (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

- (a) prevent, abate, and control the pollution of state waters;
- (b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under 69-4809.1(1)(a); or
- (c) prevent, abate, and control any violation of rules relating to pre-treatment standards.

(2) In furtherance of subsection (1), a person violating a condition, limitation, standard, or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. The order must specify the condition, limitation, standard, or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard, or other requirement that has been violated. The compliance order issued under this section shall be either personally served by a person qualified to perform service under the Montana rules of civil procedure or by certified mail.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for a violation which would be subject to a compliance order under subsection (2). An action under this subsection may be commenced in the district court of the county in which the defendant is located or resides or is doing business or any county where a violation occurs or is threatened if the defendant cannot be located in Montana, and the court shall have jurisdiction to restrain the violation and to require compliance.

(4) A person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to this section shall be subject to the penalty provisions of 69-4823.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in 69-4802, any responsible corporate officer.

History: En. 69-4820.1 by Sec. 5, Ch. 506, L. 1973; amd. Sec. 9, Ch. 455, L. 1975; amd. Sec. 10, Ch. 140, L. 1977; amd. Sec. 4, Ch. 308, L. 1977; amd. Sec. 5, Ch. 444, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 140, 308, and 444. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1975 amendment inserted "on its own initiative" in the first paragraph of subsection (1); inserted "In furtherance of subsection (1) of this section" at the beginning of subsection (2); substituted "chapter" for "section" in subsection (2); substituted "authorized representative" for "authorized employee" in the last sentence of subsection (2); and made minor changes in phraseology.

Chapter 140, Laws of 1977, substituted "69-4809.1 (1) (a)" at the end of subdivision (1) (b) for "section 69-4806, R.C.M. 1947"; and made minor changes in phraseology, punctuation and style.

Chapter 308, Laws of 1977, inserted "or any county where a violation occurs or is threatened if the defendant cannot be located in Montana" in the second sentence of subsection (3).

Chapter 444, Laws of 1977, substituted "either personally served by a person qualified to perform service under the Montana rules of civil procedure or by certified mail" at the end of subsection (2) for "personally served by an authorized representative of the department"; and made a minor change in phraseology.

Service of Compliance Order

Service of compliance order upon the city clerk was sufficient to notify the city of its duty to comply, and therefore proper, notwithstanding that Rule 4D(2)

(g), M. R. Civ. P., requires service upon the mayor when a city is sued; in proceedings under it, the special provisions of the Water Pollution Act prevail over

inconsistent provisions in the Rules of Civil Procedure. *State ex rel. Department of Health & Environmental Sciences v. City of Livingston*, — M —, 548 P 2d 155.

69-4821. Judicial remedies—review by district court. (1) An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.

(2) A person interested in the order may intervene, in the manner provided by the Rules of Civil Procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the department may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal does not stay the effectiveness of any order of the board, unless the court finds that there is probable cause to believe:

(a) That refusal to grant a stay will cause serious harm to the affected party, and

(b) That any violation found by the board:

(i) Will not continue, or

(ii) If it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board.

History: En. Sec. 15, Ch. 21, L. 1971; amd. Sec. 66, Ch. 349, L. 1974.

Amendments

The 1974 amendment deleted provisions pertaining to the procedure on petition for review of an order of the board by the

district court, the determinations by the court, and authorizing appeal from the district court decision to the supreme court; substituted "department may appoint" for "board may appoint" in subsection (3); and made minor changes in phraseology and punctuation.

69-4822. Confidentiality of records. Any information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret, if he wishes such information to enjoy confidential status. The department shall be served in any such action, and may intervene as a party therein. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollu-

tion, if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section.

History: En. Sec. 16, Ch. 21, L. 1971; amd. Sec. 10, Ch. 455, L. 1975.

Amendments

The 1975 amendment substituted "reveal methods or processes entitled to protection as trade secrets, shall be maintained as confidential if so determined by a court of confidential jurisdiction" at the end of the second sentence for "tend to weaken his competitive position shall be confidential unless he expressly agrees to its publication or availability to the general public

or unless such information is introduced as evidence in a hearing before the board"; inserted the third sentence; and deleted from the end of the next to the last sentence "except that the party supplying the information to the board may apply to the board for confidential status for the information so supplied, and the board shall determine that the disclosure of said information is in the public interest prior to the disclosure to the public of said information."

69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order—purpose and construction of chapter. (1) A person who violates this chapter or a rule, permit, effluent standard, or order issued under the provisions of this act shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000). Each day of violation constitutes a separate violation.

(2) A person who willfully or negligently violates section 69-4806, R. C. M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation or by imprisonment for not more than one (1) year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or imprisonment for not more than two (2) years, or both.

(3) Action under subsection (1) of this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy. The department shall institute and maintain any enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. This chapter does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does this chapter or an act done under it estop the state or a municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) Fines collected shall be deposited to the state general fund.

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six (6) months, or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants.

History: En. Sec. 17, Ch. 21, L. 1971; amd. Sec. 6, Ch. 506, L. 1973; amd. Sec. 67, Ch. 349, L. 1974; amd. Sec. 11, Ch. 455, L. 1975.

Amendments

The 1973 amendment deleted "any provision of this chapter other than section 16 of this act, or" before "any rule" near the beginning of subsection (1); substituted "civil penalty" for "fine" near the end of the first sentence of subsection (1); increased the maximum daily penalty specified in subsection (1) from \$1,000 to \$10,000; substituted the reference to section 69-4806 near the beginning of subsection (2) for a reference to section 69-4823; inserted "or any pretreatment standard established pursuant to this act" in the first sentence of subsection (2); increased the maximum daily fine specified by the first sentence of subsection (2) from \$1,000 to \$25,000; added to the first sentence of subsection (2) the provision

for imprisonment; added the second sentence to subsection (2); substituted "to the state general fund" at the end of subsection (5) for "to the credit of the department, to be used to alleviate pollution for which no person subject to action by the department or board is responsible"; added subsections (6) and (7); and made minor changes in phraseology.

The 1974 amendment substituted "department" for "board" in the second sentence of subsection (3) and made numerous minor changes in phraseology and punctuation.

The 1975 amendment inserted "this chapter or" near the beginning of subsection (1); deleted "guilty of an offense" before "subject to a civil penalty" in subsection (1); substituted "violation" for "offense" at the end of subsection (1); inserted "or negligently" after "willfully" near the beginning of subsection (2); and made minor changes in punctuation.

69-4824. Emergencies. Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise. Notice of the order shall conform to the requirements of 69-4820(1) so far as practicable; the notice shall indicate that the order is an emergency order. Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than 5 days thereafter, unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in 69-4820. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in 69-4820(5). An action for review of the order of the board may be initiated in the manner specified in 69-4821. The initiation of such an action or taking of an appeal may not stay the effectiveness of the order, unless the court finds that the board did not have reasonable cause to issue an order under this section.

History: En. Sec. 18, Ch. 21, L. 1971;
amd. Sec. 11, Ch. 140, L. 1977.

Amendments

The 1977 amendment substituted statute section numbers for references to sections of this act; and made minor changes in phraseology and style.

69-4824.1. Additional emergency powers. Notwithstanding any other provisions of this act, the department upon receipt of evidence that a pollution source or combination of sources is endangering the health, welfare, or livelihood of a person may bring suit in the district court of any county in which the defendant is located or resides or is doing business to enjoin the discharge of pollutants causing or contributing to the alleged pollution.

History: En. 69-4824.1 by Sec. 7, Ch. 506, L. 1973.

69-4825. Injunctions. The department may bring an action for an injunction against the continuation of an alleged violation of the terms or conditions of a permit issued by the department or any rule or effluent standard promulgated under this chapter or against a person who fails to comply with an emergency order issued by the department under section 69-4824 or a final order of the board. The court to which the department applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the department are true, and it may issue a temporary restraining order pending action on the temporary injunction.

History: En. Sec. 19, Ch. 21, L. 1971;
amd. Sec. 68, Ch. 349, L. 1974; amd. Sec. 12, Ch. 455, L. 1975.

Amendments

The 1974 amendment substituted "department" for "board" in three places and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "viola-

tion of the terms or conditions of a permit" in the first sentence for "violation which has been the basis of suspension or revocation of a permit"; inserted "issued" before "by the department" the first time it appears in the first sentence; and inserted "or any rule or effluent standard promulgated under this chapter" in the first sentence.

69-4826. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the department protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest. If a violation is established by the investigation of the department, appropriate enforcement action shall be taken.

History: En. Sec. 19, Ch. 21, L. 1971;
amd. Sec. 68, Ch. 349, L. 1974; amd. Sec. 13, Ch. 455, L. 1975.

Amendments

The 1974 amendment substituted "department" for "board" in the first sen-

tence; deleted a second sentence which read "The board shall thereupon direct the department to investigate the alleged violation"; and made minor changes in phraseology and punctuation.

The 1975 amendment added the final sentence.

69-4827. Co-operation with the council, board, and department. The council, board, and department may require the use of records of all state agencies and may seek the assistance of such agencies. State, county, and

municipal officers and employees, including sanitarians and other employees of local department of health, shall co-operate with the council, board and department, in furthering the purposes of this chapter, so far as is practicable and consistent with their other duties.

History: En. Sec. 21, Ch. 21, L. 1971.

Repealing Clause

Section 22 of Ch. 21, Laws 1971 read
 "Sections 69-4803, 69-4807, 69-4808, 69-4809, 69-4815, 69-4816, 69-4817, 69-4818, and 69-4819, R. C. M. 1947, are repealed."

Separability Clause

Section 23 of Ch. 21, Laws 1971 read

"It is the intent of the legislative assembly that, if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 49—PUBLIC WATER SUPPLY

Section

- 69-4902. Definitions.
- 69-4903. Functions, powers, and duties of the board.
- 69-4904. Powers and duties of the department.
- 69-4905.1. Variance.
- 69-4905.2. Licensing of laboratories.
- 69-4907. Appeal from rule or standard—injunction to require compliance—penalties.

69-4902. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Contamination" means impairment of the quality of state waters by sewage, industrial, or other wastes creating a hazard to human health.

(2) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not "pollution" under this chapter.

(3) "Drainage" means rainfall, surface, and subsoil water.

(4) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings together with ground water infiltration and surface water present.

(5) "State waters" means any body of water, irrigation system, or drainage system either surface or underground.

(6) "Public water supply" means the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

(7) "Person" means any individual, firm, corporation, water or ice company, public institution, municipality, or other political subdivision of the state.

(8) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(9) "Board" means the board of health and environmental sciences provided for in Title 82A, chapter 6.

(10) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource together with any sewage that may be present.

(11) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

History: En. Sec. 141, Ch. 197, L. 1967; amd. Sec. 1, Ch. 67, L. 1974; amd. Sec. 1, ch. 556, L. 1977.

Amendments

The 1974 amendment added "or twenty-five (25) or more persons on a regular and continuous basis" at the end of subsection (6) and made a minor change in phraseology.

The 1977 amendment substituted "industrial, or other wastes" in subdivision

(1) for "or industrial wastes"; rewrote subdivisions (2) and (4) defining pollution and sewage; inserted "the provision of water for human consumption from" in subdivision (6); substituted "for at least 60 days out of the calendar year" in subdivision (6) for "on a regular and continuous basis"; added subdivisions (8) through (11); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume and 1974 amendment note.

69-4903. Functions, powers, and duties of the board. (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used as a public water supply;

(b) fees for services rendered by the department in analyzing water and conducting inspections;

(c) monitoring, record keeping, and reporting by persons who own or operate a public water supply;

(d) requiring public notice to all users of a public water supply when a person has been granted a variance or is in violation of this chapter or a rule or order issued pursuant to this chapter;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supplies;

(f) the siting, construction, operation, and modification of a public water supply;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances as authorized by this chapter; and

(1) any other requirement necessary for the protection of public health as described in this chapter.

(3) The board may issue orders necessary to fully implement the provisions of this chapter.

History: En. Sec. 142, Ch. 197, L. 1967; amd. Sec. 70, Ch. 349, L. 1974; amd. Sec. 2, Ch. 556, L. 1977.

Amendments

The 1974 amendment substituted "board of health and environmental sciences" for "state board of health" in the caption and in the introductory phrase and made minor changes in phraseology and punctuation.

The 1977 amendment substituted subdivisions (2)(a) through (2)(i) for a description of the subject of such rules and standards; added subsection (3); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume and 1974 amendment note.

69-4904. Powers and duties of the department. The department shall:

(1) upon its own initiative or complaint to the department or to the mayor or health officer of a municipality or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their purity and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, waste water, and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

(4) advise persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) collect fees for services rendered in analyzing water and conducting inspections to cover costs of the service and deposit the fees collected in an earmarked revenue fund for use by the department;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter on premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the board are being obeyed;

(9) enforce and administer the provisions of this chapter;

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supplies and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this chapter.

History: En. Sec. 143, Ch. 197, L. 1967; amd. Sec. 71, Ch. 349, L. 1974; amd. Sec. 3, Ch. 556, L. 1977.

Amendments

The 1974 amendment substituted "department of health and environmental sciences" for "state department of health" in the caption and in the introduction; deleted "with approval of the state board" at the beginning of subdivision (6); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "de-

partment" for "department of health and environmental sciences" in the preliminary phrase; inserted "its own initiative or" near the beginning of subdivision (1); inserted "conducting" in subdivision (6); substituted "deposit the fees collected in an earmarked revenue fund for use by the department" in subdivision (6) for "deposit receipts in the general fund"; substituted subdivision (9) for "Notify the attorney general of violations of laws on pollution of state waters"; added subdivisions (10) through (12); and made minor changes in punctuation and style.

69-4905.1. Variance. The department may grant a variance from the requirements of this chapter or the rules adopted under this chapter pursuant to the terms and conditions of the variance rules adopted by the board. A variance granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: En. 69-4905.1 by Sec. 4, Ch. 556, L. 1977.

Title of Act

An act to revise Title 69, chapter 49, to give the state primary enforcement responsibility under the federal Safe Drinking Water Act; authorizing the board of health and environmental sciences to establish safe drinking water standards; authorizing the department of health and

environmental sciences to administer and enforce the provisions of Title 69, chapter 49; providing for the issuance of variances; requiring that laboratories performing analysis of public water supplies be licensed; providing for the collection of civil penalties; amending sections 69-4902, 69-4903, 69-4904, and 69-4907, R.C.M. 1947; and repealing section 69-4908, R.C.M. 1947.

69-4905.2. Licensing of laboratories. (1) No laboratory analysis of water taken from a public water supply or any report of such an analysis required by this chapter or a rule adopted under this chapter may be accepted by the department or board unless the analysis or report is made by the laboratory of the department or by a laboratory licensed by the department for such purposes. The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by the board.

(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

History: En. 69-4905.2 by Sec. 5, Ch. 556, L. 1977.

69-4907. Appeal from rule or standard—injunction to require compliance—penalties. (1) A person aggrieved by a rule, standard, or order

adopted or issued pursuant to this chapter may appeal to the district court. While the appeal is pending, the rule, standard, or order is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this chapter or a rule or order issued as authorized by this chapter. The department may also initiate an action to collect a civil penalty as provided in this section.

(3) Penalty for violations. Any person violating this act or any rule or order of the board or department issued under the provision of this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50 nor more than \$500. Each day upon which a violation of this act occurs shall be considered a separate offense.

History: En. Sec. 146, Ch. 197, L. 1967; amd. Sec. 72, Ch. 349, L. 1974; amd. Sec. 6, Ch. 556, L. 1977.

Amendments

The 1974 amendment substituted "board" for "state board" in the first and second sentences; substituted "department" for "state board" in the final sentence; and made a minor change in phraseology.

The 1977 amendment divided the former section into subsections (1) and (2); deleted "of the board" after "standard" in two places in subsection (1); inserted "or

order adopted or issued pursuant to this chapter" in subsection (1); substituted "compliance with this chapter or a rule or order issued as authorized by this chapter" at the end of the first sentence in subsection (2) for "compliance with rules and standards"; added the second sentence to subsection (2); added subsection (3); and made minor changes in phraseology and punctuation.

Repealing Clause

Section 7 of Ch. 556, Laws 1977 read "Section 69-4908, R.C.M. 1947, is repealed."

69-4908. Repealed.

Repeal

Section 69-4908 (Sec. 147, Ch. 197, L. 1967), relating to the penalty for violation

of the chapter, was repealed by Sec. 7, Ch. 556, Laws 1977.

CHAPTER 50—SANITATION IN SUBDIVISIONS

Section

- 69-5001. Public policy of the state.
- 69-5002. Definitions.
- 69-5003. Approval of plans for facilities in subdivisions.
- 69-5005. Rules for administration and enforcement of chapter.
- 69-5006. Request for hearing.
- 69-5007. Enforcement.
- 69-5008. Penalties.
- 69-5009. Records of state and other agencies.
- 69-5010. Authority to inspect and monitor.

69-5001. Public policy of the state. It is the public policy of this state to extend present laws controlling water supply, sewage disposal, and solid waste disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems to protect the quality and potability of water for public water supplies and domestic uses; and to protect the quality of water for other beneficial uses, including uses relating to agriculture, industry, recreation and wildlife.

History: En. Sec. 148, Ch. 197, L. 1967; amd. Sec. 1, Ch. 509, L. 1973.

erence to solid waste disposal; and added the final two clauses, beginning with "to protect the quality and potability."

Amendments

The 1973 amendment inserted the ref-

69-5002. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and includes any re-subdivision; and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes. A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not; provided, however, condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this chapter are exempt from provisions of this chapter.

(2) "Board" means the board of health and environmental sciences.

(3) "Department" means department of health and environmental sciences.

(4) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter or building requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(7) "Public water supply system" or "public sewage disposal system" means respectively, a water supply or sewage disposal system that serves 10 or more families or 25 or more persons for at least 60 days out of the calendar year.

History: En. Sec. 149, Ch. 197, L. 1967; amd. Sec. 2, Ch. 509, L. 1973; amd. Sec. 1, Ch. 529, L. 1975; amd. Sec. 2, Ch. 557, L. 1977.

Amendments

The 1973 amendment completely rewrote this section, including subdivision (1); and added subdivisions (2) through (6).

The 1975 amendment substituted "land so divided, which creates one (1) or more parcels containing less than twenty (20) acres" for "land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less" near the beginning of subdivision (1); deleted "without regard to the method of descriptions thereof" after "exclusive of public roadways" in subdivision (1); de-

leted "or any interest therein" before "may be sold" in subdivision (1); deleted "either immediately or in the future" after "conveyed" in subdivision (1); inserted "regardless of size" after "condominium or area"; inserted "permanent" before "multiple space"; substituted the second sentence of subdivision (1) for "provided further that a division of land is a subdivision when the division creates a second or any subsequent parcel for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on July 1, 1973, where any of the parcels segregated from the original tract is ten (10) acres or less, exclusive of public roadways, in size, without regard to the method of description thereof. The plat of a subdivi-

sion so created shall show all of the parcels segregated from the original tract whether contiguous or not"; deleted former subdivision (1)(a) which read "'subdivision' shall include any condominium or areas providing multiple space for camping trailers, house trailers, or mobile homes, regardless of the size of the parcel of land upon which the same is situated"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "created by a division of land" in the last sentence of subdivision (1) for "segregated from the original tract"; inserted "or the construction of water supply or sewage or solid waste disposal facilities" in subdivision (4); added "and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed" at the end of subdivision (5); added subdivision (7); and made minor changes in phraseology, punctuation and style.

69-5003. Approval of plans for facilities in subdivisions. (1) Outside master planning areas adopted pursuant to 11-3801 through 11-3856, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction.

(2) Within master planning areas adopted pursuant to 11-3801 through 11-3856, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in subsection (5) of this section. In this case, department approval is not necessary.

(3) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain department approval as provided in subsection (7)(a).

(4) Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the department has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision.

(5) When a subdivision is reviewed under the master plan provisions of 69-5003, the local governing body shall, within 20 days after receiving an application under the subdivision and platting act distribute the lot fees as determined by subsection (12) and shall send notice of certification to the department that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision. The notice of certification shall include the following:

(a) the name and address of the applicant;

(b) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) how construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the master plan, if one has not yet been submitted to the department;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued.

(6) The exclusions provided for in this section shall not relieve any person of the duty to comply with the requirements of the public water supply act, Title 69, chapter 49.

(7) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) The person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction whenever department approval is necessary; or

(b) Whenever department approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

(8) When a subdivision as defined in this chapter is excluded from the provisions of 11-3862, except 11-3862(9), and the subdivision is otherwise subject to the provisions of this chapter, plans and specifications of the subdivision as defined in this chapter shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) At any time after the developer has submitted an application under the subdivision and platting act, the developer shall present to the department a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the department.

(b) The department must give final action of the proposed plan within 60 days, unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(9) A person may not construct or use a facility which deviates from the plans and specifications filed with the department until the department has approved the deviation.

(10) A subdivision excluded from the provisions of Title 11, chapter 38, shall be submitted for review by the department according to the provisions of this chapter, except that the following divisions are not subject to review by the department:

- (a) the exclusions cited in 11-3862(9) and 11-3862(10);
- (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure requiring water or sewage disposal is to be erected on the additional acquired parcel; and
- (c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

(11) Within 90 days after July 1, 1977, the department and the department of community affairs shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this act and the provisions of Title 11, chapter 38. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity. The review required by Title 69, chapter 50, and the provisions of Title 11, chapter 38, shall occur concurrently.

(12) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 69-5005.

History: En. Sec. 150, Ch. 197, L. 1967; amd. Sec. 4, Ch. 509, L. 1973; amd. Sec. 2, Ch. 529, L. 1975; amd. Sec. 12, Ch. 140, L. 1977; amd Sec. 1, Ch. 554, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 140 and once by Ch. 554. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

The 1975 amendment substituted "until the department has indicated that the subdivision is subject to no sanitary restriction" at the end of subsection (1) for "when the status of the subdivision is conditional"; designated the last part of former subsection (1) as subsection (2); inserted subsection (3); and redesignated former subsection (2) as subsection (4).

Chapter 140, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 544, Laws of 1977, inserted "Outside master planning areas adopted pursuant to 11-3801 through 11-3856" at the beginning of the section; inserted

"erect any facility for the supply of water or disposal of sewage or solid waste" in subsection (1); inserted subsections (2) through (6) and renumbered former subsections (2) through (4) accordingly; added "one of the following conditions has been met" at the end of the introductory paragraph of subsection (7); added "when-ever department approval is necessary; or" at the end of subdivision (7)(a); inserted subdivision (7)(b); inserted "At any time after the developer has submitted an application under the subdivision and platting act" at the beginning of subdivision (8)(a); added "and information required by the department" at the end of the first sentence of subdivision (8)(a); deleted a second sentence of subdivision (8)(a) which read "Within sixty (60) days of this submission, based upon its receipt by the department, the department shall notify the developer if the material submitted is satisfactory to determine if sanitary restrictions are necessary and if not what additional information is required for subsequent action by the department"; deleted former subdivisions (3)(b) and (3)(c) reading "(b) If additional information is necessary to determine if sanitary restrictions are necessary no further processing will be made on the request until the mission information is made available to the department by the developer. (c) The department must notify

the developer within thirty (30) days if his submission of additional requested material is satisfactory. If the material is not satisfactory, the provision of subsection (b) shall apply"; redesignated former subdivision (3)(d) as subdivision (8)(b); deleted "After the department has notified the developer that they have all the necessary information required for review" at the beginning of subdivision (8)(b); added subsections (10) to (12); and made minor changes in phraseology, punctuation and style.

69-5005. Rules for administration and enforcement of chapter. (1) The department shall adopt reasonable rules, including adoption of sanitary standards, and setting forth fees, not to exceed \$25 per parcel for services rendered in the review of plats and subdivisions necessary for administration and enforcement of this chapter.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area,

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat;

(j) a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for

in section 79-410. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

- (i) number of lots in the subdivision;
- (ii) the type of water system to serve the development;
- (iii) the type of sewage disposal to serve the development; and
- (iv) the degree of environmental research necessary to supplement the review procedure.

(4) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(5) The department shall delegate to a local government the authority to review a subdivision under Title 69, chapter 50, when the subdivision involves five or fewer parcels and the local government has qualified personnel to adequately review the water supply and sewage and solid waste disposal facilities proposed for the subdivision, in delegating authority pursuant to this subsection, the department shall enter into an agreement with the local government wherein the department shall agree to transfer not less than \$10 of the fee per parcel collected pursuant to this section to the local government for the review of subdivisions containing five or fewer parcels. When a local government has conducted a review of a subdivision containing five or fewer parcels pursuant to this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision.

History: En. Sec. 152, Ch. 197, L. 1967; amd. Sec. 3, Ch. 509, L. 1973; amd. Sec. 3, Ch. 529, L. 1975; amd. Sec. 3, Ch. 557, L. 1977.

Amendments

The 1973 amendment divided the section into subsections (1) and (2); substituted "department" for "state board" at the beginning of subsection (1); substituted "adopt reasonable rules" for "make rules" in subsection (1); inserted the reference to solid waste disposal in subsection (2); inserted "distance from lakes, streams, and wells" in subsection (2); added "and the quality of life for uses relating to agriculture, industry, recreation, and wildlife" at the end of subsection (2); added subsection (3); and made minor changes in phraseology.

The 1975 amendment inserted "and setting forth fees, not to exceed fifteen dollars (\$15) per parcel for services rendered in the review of plats and subdivisions" in subsection (1); added subdivision (3)(i); and made minor changes in punctuation.

The 1977 amendment increased the maximum fee in subsection (1) from \$15 to \$25; inserted subdivision (3)(d); redesignated former subdivisions (3)(d) through (3)(i) as subdivisions (3)(e) through (3)(j); added subsections (4) and (5); and made minor changes in style.

Effective Date

Section 4 of Ch. 529, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved May 1, 1975.

69-5006. Request for hearing. Upon denial of approval of subdivision plans and specifications relating to environmental health facilities the person who is aggrieved by such denial may request a hearing before the board. Such hearings will be held pursuant to the Montana Administrative Procedure Act [82-4201 to 82-4225].

History: En. Sec. 5, Ch. 509, L. 1973.

Title of Act

An act to amend sections 69-5001, 69-5002, 69-5003 and 69-5005, R. C. M. 1947, by broadening the statement of public policy to include solid waste disposal and to refer to quality of water for all uses; revising the definition of subdivision; adding other definitions; revising the provisions for making rules and standards;

requiring approval of subdivision plats and plans and specifications by the department of health before filing with county clerk and recorder; providing for enforcement proceedings and hearings on alleged violations; providing remedies and sanctions relating to violations; providing for use of records and co-operation of other agencies; and providing for effect of invalidity of part of act.

69-5007. Enforcement. (1) If a written complaint alleging violation is made to the department, or if the department has reason to believe that a person has violated this act or any rule thereunder, and if a violation is found to exist, the department shall issue notice and hold a hearing pursuant to the Montana Administrative Procedure Act [82-4201 to 82-4225]. In addition to or instead of issuing an order, the department may initiate appropriate action for injunction or for recovery of penalty as provided in the act.

History: En. Sec. 6, Ch. 509, L. 1973.

Compiler's Notes

As enacted, this section contained no subsection (2).

69-5008. Penalties. (1) A person violating any provision of the act or any rule or order issued under this act is guilty of an offense and subject to a fine of not to exceed one thousand dollars (\$1,000).

(2) Action under subsection (1) of this section does not bar enforcement of this act or rules or orders issued under it by injunction or other appropriate remedy.

(3) The purpose of this section is to provide additional and cumulative remedies. This act does not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor does any provision of this chapter or any act done by virtue of it estop the state, any municipality or other subdivision of the state, or any person in the exercise of his rights in equity or under the common law or statutory law.

History: En. Sec. 7, Ch. 509, L. 1973.

69-5009. Records of state and other agencies. The department may require the use of records of all state, county and municipal agencies and may seek the assistance of those agencies. State, county and city officers and employees, including local health officers and sanitarians, shall co-operate with the board and the department in furthering the purposes of this act, so far as is practical and consistent with their own duties.

History: En. Sec. 8, Ch. 509, L. 1973.

Separability Clause

Section 9 of Ch. 509, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

69-5010. Authority to inspect and monitor. In order to carry out the objectives of Title 69, chapter 50, to monitor the installation of sewage

disposal and water supply systems and to prevent the occurrence of water pollution problems associated with subdivision development, the department or the board may:

(1) whenever a public water supply or public sewage disposal system is proposed or has been constructed, at reasonable times, after presentation of appropriate credentials by an authorized representative of the department, enter upon any public or private property to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of Title 69, chapter 50, rules, or orders are being satisfied;

(2) whenever a public water supply or public sewage disposal system is proposed or has been constructed, require as a condition of approval that records concerning the operation of a public sewage disposal or public water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of water-quality-related data.

History: En. 69-5010 by Sec. 1, Ch. 557, power to inspect and monitor water supply and sewage disposal systems; to add L. 1977.

Title of Act An act to generally revise Title 69, chapter 50, and to give the department of health and environmental sciences the amending sections 69-5002 and 69-5005, R.C.M. 1947.

CHAPTER 51—CADAVERS

Section

69-5104. Qualifications to perform autopsies—written report of findings.

69-5102. Procedure to procure cadavers.

Compiler's Notes

Section 105, Ch. 349, Laws 1974, substituted "department of health and environmental sciences" in this section for "state department of health."

69-5104. Qualifications to perform autopsies—written report of findings. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy, upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital, or skilled nursing facility, to the next of kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

History: En. Sec. 156, Ch. 197, L. 1967; second sentence the clause providing for amd. Sec. 1, Ch. 158, L. 1973. reports to the attending physician and hospital facilities; and made minor changes in style.

Amendments

The 1973 amendment inserted in the

CHAPTER 52—HOSPITALS AND HEALTH CARE FACILITIES

Section

69-5201.	Definitions.
69-5203.1.	Unlawful use of term "nursing."
69-5204.	License fees.
69-5205.	Application for license—procedure.
69-5207.	Denial of application for long-term care facility.
69-5210.	Denial, suspension or revocation of license—procedure.
69-5212.	Construction, expansion, remodeling, or alteration of a facility—approval of plans and specifications by the department of health and environmental sciences.
69-5213.	Rules and standards for hospitals and hospital related facilities—adoption and publication by the department of health and environmental sciences.
69-5220.	Injunction.
69-5222.	Definitions.
69-5223.	Refusal to participate in sterilization.
69-5224.	Severability.

69-5201. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Hospital" means a health care facility licensed by the department to provide, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care. A health care facility, in order to be licensed as a hospital, must have an organized medical staff, provide 24-hour nursing care by licensed professional nurses, and be in compliance with the rules for licensed hospitals adopted by the department.

(2) "Hospital-related facility" means a facility licensed by the department to provide diagnosis, treatment, medical or nursing care, or medically related rehabilitation services. Such facilities include but are not limited to outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, alcoholism and drug dependency centers, and half-way houses. A health care facility, in order to be licensed as a "hospital-related facility", shall be in compliance with the regulations for the specific category of facility adopted by the department.

(3) "Outpatient facility—A" means a physically separate component of a licensed hospital or a medical clinic or other establishment owned or operated by a licensed physician which has an observation bed or beds and provides to patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana. No patient may be allowed to remain in an outpatient facility for more than 6 hours.

(4) An "observation bed" is a bed used by a patient recovering from surgery or other treatment.

(5) "Outpatient facility—B" means a facility operated physically apart from a hospital, other than a medical clinic or other establishment owned or operated by a licensed physician, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in Montana, but which does not have an observation bed or beds as defined in subsection (4).

(6) "Public health center" means a publicly owned facility utilized by a local health unit for the provision of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with a public health center.

(7) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision, including medical services and evaluation and psychological, social, and vocational services and evaluation.

(8) (a) "Long-term care facility" means a place which provides skilled nursing care to a total of two or more persons or personal care to more than three persons who, by reason of illness or disability, are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage, and includes the facilities defined as follows:

(i) "Skilled nursing facilities" are establishments furnishing continuous skilled nursing care and related services 24 hours a day.

(ii) "Intermediate care facilities—A" are establishments furnishing limited skilled nursing care and personal care.

(iii) "Intermediate care facilities—B" are establishments providing only personal care and services to residents.

(iv) "Combination facilities" are establishments providing two or more of the following services: skilled nursing care and intermediate care—A and B.

(b) Hotels, motels, boarding houses, rooming houses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered to be long-term care facilities.

(9) "Infirmarium" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured.

(10) "Infirmarium—A" provides outpatient and inpatient care.

(11) "Infirmarium—B" provides outpatient care only.

(12) "Person" means an individual, firm, partnership, association, corporation, or governmental unit.

(13) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(14) "Resident" means a person who is in a long-term care facility as a patient or for personal care.

(15) "Health care facility" means a hospital, hospital-related facility, or long-term care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(17) "Construction" means the erection, expansion, remodeling, or alteration of a new or existing facility, the capital expenditure for which amounts to \$50,000 or more in any 12-month period or any substantial change in services, any increase or decrease in the number of beds in excess of 10% of the licensed capacity of the facility or in excess of 10 beds, whichever is the lesser, or any purchase of therapeutic or diagnostic equipment

(excluding replacement of existing equipment) in any 12-month period at a cost exceeding 2% of the facility's total operating costs for the most recently completed fiscal year up to a maximum of \$100,000 or exceeding \$10,000, whichever is larger. All exemptions from this definition must nevertheless be consistent with the state medical facilities plan of the department.

History: En. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977.

Amendments

The 1971 amendment inserted definitions of "intermediate care facilities" and made changes in phraseology and style.

The 1973 amendment completely rewrote this section supplying definitions for new terms.

The 1974 amendment substituted "more than three (3) persons" for "more than two (2) persons" in subdivision (2)(e).

The 1975 amendment substituted subdivisions (2)(a) and (2)(b) for former subdivisions (2)(a), (2)(a)(i), and (2)(a)(ii) which read:

"(a) 'Outpatient facility' means a place, located in or apart from a hospital, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana, and which makes provisions for its patients to receive a reasonably full range of physical or mental diagnostic and treatment services.

"(i) 'Outpatient facility—A' is operated as an organizational component of a hospital and may establish observation beds. 'Observation beds' are those beds established for use by an outpatient recovering from minor surgery or other treatment and will be occupied for a period of time not in excess of six (6) hours.

"(ii) 'Outpatient facility—B' is operated apart from a hospital and may not include observation beds;" redesignated former subdivisions (2)(b) through (2)(e) as subdivisions (2)(c) through (2)(f); and added subdivisions (7) and (8).

The 1977 amendment redesignated former subdivision (2)(a) as subdivision (3); designated a former second sentence of subdivision (3) as subdivision (4); redesignated former subdivisions (2)(b) through (2)(d) as subdivisions (5) through (7); redesignated former subdivision (2)(e) as subdivision (8)(a); redesignated former subdivision (2)(e)(v) as subdivision (8)(b); redesignated former subdivision (2)(f) as subdivisions (9) through (11); redesignated former subdivisions (3) through (8) as subdivisions (12) through (17); added "provided for in Title 82A, chapter 6" to subdivision (16); and made minor changes in phraseology, punctuation and style.

69-5203. License required—duration—transfer prohibited—display.

Compiler's Notes

Section 105, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state department of health."

69-5203.1. Unlawful use of term "nursing." It is unlawful for any facility, operating in this state, to use the word "nursing" in its name, signs, advertisements, etc., unless that facility does, in fact, provide twenty-four (24) hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973.

Title of Act

An act to revise chapter 52 of Title 69 by broadening the provisions of and redefining the terms used under the section

of chapter entitled "definitions"; providing a new section in the chapter with respect to unlawful use of term in connection with name, signs and advertisements of facilities; revising the provisions for making rules; and amending sections 69-5201 and 69-5213, R. C. M. 1947.

69-5204. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(a) facilities with twenty (20) beds or less—\$20;

(b) facilities with twenty-one (21) beds or more—\$1 per bed.

History: En. Sec. 162, Ch. 197, L. 1967; present fees for a former fixed fee of \$20
amd. Sec. 1, Ch. 282, L. 1975. per license; and made minor changes in
phraseology and style. For prior version,
see parent volume.

Amendments

The 1975 amendment substituted the

69-5205. Application for license—procedure. The procedure to apply for a license is:

(1) at least thirty (30) days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee;

(2) the application shall contain:

(a) to (d) * * * [Same as parent volume.]

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract or lease agreement, if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967; partment" for "state board of health" in
amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. subdivision (2)(e).
2, Ch. 282, L. 1975. The 1975 amendment deleted "of twenty
dollars (\$20)" at the end of subdivision
(1).

Amendments

The 1974 amendment substituted "de-

69-5207. Denial of application for long-term care facility. The department may deny an application for a long-term care facility license if:

(1) it fails to meet minimum standards prescribed under 69-5213;

(2) the staff is insufficient in number or unqualified by lack of training or experience;

(3) the applicant or any person managing it has been convicted of a felony and denial of a license on that basis is qualified by 66-4003 or the applicant otherwise shows evidence of character traits inimical to the health and safety of residents; or

(4) the applicant does not have the financial ability to operate the facility in accordance with law, rules, or standards adopted by the department.

History: En. Sec. 165, Ch. 197, L. 1967;
amd. Sec. 107, Ch. 349, L. 1974; amd. Sec.
23, Ch. 187, L. 1977.

Amendments

The 1974 amendment substituted "de-
partment" for "state board."

The 1977 amendment inserted "and denial of a license on that basis is qualified by 66-4003" in subdivision (3); and made minor changes in style and phraseology.

69-5208. Revocation or refusal to renew long-term care facility.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substituted "department" in this section for
"state board."

tuted "department" in this section for
"state board."

69-5210. Denial, suspension or revocation of license—procedure. (1)
A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less than fifteen (15) days after mailing or service, for a hearing before the board;

(3) The decision of the board is final thirty (30) days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal shall be in the district court where the facility is located or will be located.

History: En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974.

Amendments

The 1974 amendment deleted provisions

specifying the procedure at the hearing by the board on denial, suspension or revocation of a license; added the second sentence to subsection (3); and made changes in phraseology, punctuation, and style.

69-5211. Repealed.

Repeal

Section 69-5211 (Sec. 169, Ch. 197, L. 1967), relating to review by the district court of a decision of the state board and

appeal of the decision of the district court, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-5212. Construction, expansion, remodeling, or alteration of a facility—approval of plans and specifications by the department of health and environmental sciences. (1) The department may adopt rules to require an applicant or licensee who contemplates construction of, alteration or addition to a health care facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction. Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility.

(2) Penalties for failure to obtain prior approval of the department are as follows:

(a) Any person who constructs any new health care facility as defined in section 69-5201 without prior approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), the fine to be deposited in the state general fund, and this new facility is not eligible for licensure as a health care facility as defined in section 69-5201.

(b) Any person who expands, remodels or alters an existing health care facility as defined in section 69-5201 without prior written approval by the department is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), the fine to be deposited in the state general fund. An application for approval must be submitted to the department in a form together with information as the department may prescribe. The application shall include:

- (i) a narrative description of the proposed project;
- (ii) the number and type of beds and/or services to be provided;
- (iii) the estimated cost;
- (iv) the source of financing;

- (v) the expected time for completion of the proposed project; and
- (vi) a simple line-drawing showing major dimensions of the proposed project.

Within seven (7) days after receipt of the application by the department, it shall send notice thereof to every health care facility in the same licensing class within the state of Montana located within one hundred (100) miles of the applicant facility. The department shall notify the applicant, in writing, of the approval or disapproval of the proposal within ninety (90) days after the application is submitted to the department, otherwise the application is deemed approved.

(3) No application may be approved unless the action proposed:

- (a) is necessary to provide required health care in the area to be served;
- (b) can be economically accomplished and maintained; and
- (c) will contribute to the orderly development of adequate and effective health services.

(4) In making the determinations enumerated in subsection (3) the following shall be considered:

(a) the compatibility with needs shown in the appropriate state plan provided by those statutes relating to facilities, contained in sections 69-5301 through 69-5313 of this title;

(b) the availability of facilities or services which may serve as alternatives or substitutes;

(c) the need for special equipment and services in the area;

(d) the possible economies and improvement in services to be anticipated from the operation of combined central services including, but not limited to, laboratory, research, radiology, pharmacy, laundry and purchasing;

(e) the adequacy of financial resources and sources of future revenues; and

(f) the availability of sufficient manpower in the several professional disciplines.

(5) An approved application for construction is valid for one (1) year from the date of issue, but may be extended by the department for a period of six (6) months.

(6) If the department disapproves an application for construction of a facility, it shall notify the applicant of its actions and afford the applicant an opportunity to request a hearing before the board of health and environmental sciences. When this hearing is desired, the applicant shall notify the department in writing within fifteen (15) days after the notice of disapproval is received. If the decision, after hearing, is adverse, the applicant may appeal to the district court as provided in section 82-4216, R. C. M. 1947.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 447, L. 1975.

Amendments

The 1974 amendment substituted "department" for "state board" at the beginning of the section.

The 1975 amendment inserted the subsection (1) designation; inserted "construction of" before "alteration or addition"

in subsection (1); inserted "health care" before "facility" in subsection (1); and added subsections (2) to (6).

69-5213. Rules and standards for hospitals and hospital related facilities—adoption and publication by the department of health and environmental sciences. (1) The department shall promulgate, adopt and publish rules and minimum standards for licensure of all hospitals and hospital related facilities.

(2) Rules relating to building, equipment and fire and life safety shall be covered by the state building code.

(3) The department shall extend a reasonable time for compliance with rules after adoption.

History: En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974.

wrote subsections (1) and (4) (now (2)); and deleted former subsections (2) and (3). For prior law, see parent volume.

The 1974 amendment added subsection (3).

Amendments

The 1973 amendment completely re-

69-5214 to 69-5216. Repealed.

Repeal

Sections 69-5214 to 69-5216 (Secs. 172 to 174, Ch. 197, L. 1967; Sec. 23, Ch. 366, L. 1969), relating to the appointment, mem-

bers, and duties of the hospital and long-term care facility advisory council, were repealed by Sec. 113, Ch. 349, Laws of 1974.

69-5217. Discrimination among patients of physicians prohibited, etc.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substituted "department" in this section for "state board."

sterilization, although the physician has exclusive direction over his patient, he is subject to hospital rules and regulations based upon religious or moral tenets. *Ham v. Holy Rosary Hospital*, — M —, 529 P 2d 361.

Sterilization

With respect to the issue of voluntary

69-5219. Records and reports required of licensees.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board" and "board."

69-5219.1. Repealed.

Repeal

Section 69-5219.1 (Sec. 2, Ch. 290, L. 1969), relating to annual registration of

facilities with the state department of health, was repealed by Sec. 1, Ch. 335, Laws 1973.

69-5220. Injunction. The department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is endangering health and welfare.

History: En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974.

board or" before "department" at the beginning of the section and made a minor change in punctuation.

Amendments

The 1974 amendment deleted "state

69-5222. Definitions. As used in this act:

(1) "Sterilization" means the performance of, or assistance or participation in the performance of, or submission to, an act or operation intended to eliminate an individual's reproductive capacity.

(2) "Person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 69-5222 by Sec. 1, Ch. 247, participate in a sterilization operation;
L. 1974. providing penalties and remedies; and an effective date.

Title of Act

An act declaring the right to refuse to

69-5223. Refusal to participate in sterilization. (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility, or any personnel or agent or governing board thereof, to any person for damages allegedly arising from such refusal, nor be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility, or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions. If requested by any hospital or health care facility, or person desiring sterilization, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions." The refusal of any person to advise concerning, perform, assist, or participate in sterilization, shall not be a consideration in respect of staff privileges of any hospital or health care facility, nor a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section, whether by duress, coercion, or any other means. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent, or for the loss of any public benefits.

History: En. 69-5223 by Sec. 2, Ch. 247,
L. 1974.

69-5224. Severability. It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of

its applications, the part remains in effect in all the valid applications that are severable from the invalid applications.

History: En. 69-5224 by Sec. 3, Ch. 247, L. 1974. the act should be in effect from and after its passage and approval. Approved March 21, 1974.

Effective Date

Section 4 of Ch. 247, Laws 1974 provided

CHAPTER 53—HOSPITALS, MEDICAL AND RELATED FACILITY SURVEY AND CONSTRUCTION

Section

69-5301. Definitions.

69-5302. Department as principal state agency for hospital construction—contracts with federal government.

69-5303. Powers and duties of department.

69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts.

69-5307. Minimum standards for maintenance and operation of hospitals, medical, and related facilities.

69-5301. Definitions. Unless the context requires otherwise, in this chapter:

(1) to (6) * * * [Same as parent volume.]

History: En. Sec. 180, Ch. 197, L. 1967; **Amendments**
amd. Sec. 76, Ch. 349, L. 1974.

The 1974 amendment deleted a definition of "council" and made minor changes in phraseology.

69-5302. Department as principal state agency for hospital construction—contracts with federal government. The department of health and environmental sciences is the principal state agency for establishing and administering a state-wide plan for construction, modernization, alteration, equipment, maintenance, or operation of a hospital, medical, or related facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate medical and related facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967;
amd. Sec. 77, Ch. 349, L. 1974.

health and environmental sciences" for "state department of health" at the beginning of the section; deleted "With approval of the state board of health, the executive officer of" at the beginning of the second sentence; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "Department" for "State department of health" in the caption and in the second sentence; substituted "department of

69-5303. Powers and duties of department. The department shall:

- (1) Inventory existing hospitals, medical, and related facilities;
- (2) Survey the need for construction or alteration of hospitals;
- (3) Develop and administer a state plan for the construction and alteration of public and other nonprofit hospitals, medical, and related facilities;
- (4) If desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(5) Accept and deposit with the state treasurer and spend any grant, gift, or contribution made to meet costs of carrying out this act.

History: En. Sec. 182, Ch. 197, L. 1967; partment" for "state department of health" in the caption and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

69-5304. Rules for administration of this chapter, etc.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-stituted "department" in this section for "state board."

69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts. The department shall:

(1) Prepare and review a construction program in accordance with federal requirements that will provide adequate hospital, medical, and related facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably acceptable to all persons;

(2) Submit to federal agencies state plans including those for the hospital, medical, and related facilities construction program and modifications of it providing for the establishment and operation of hospital, medical, and related facilities construction activities in accordance with federal requirements;

(3) Make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities. Federal funds shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government;

(4) After approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state, and make the plan available upon request to all persons or organizations;

(5) Inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications, and that payment of federal funds is due to the applicant;

(6) Require reports, and make inspections and investigations, as necessary or required by the federal agency;

(7) Contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Sec. 184, Ch. 197, L. 1967; approval of the state board" at the beginning of the section and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment deleted "With ap-

69-5306. Publicity as to plans before they are submitted, etc.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-stituted "department" in this section for "state board."

69-5307. Minimum standards for maintenance and operation of hospitals, medical, and related facilities. The department shall prescribe minimum standards for the maintenance and operation of hospitals, medical, and related facilities receiving federal aid for construction under the state plan.

History: En. Sec. 186, Ch. 197, L. 1967; amd. Sec. 80, Ch. 349, L. 1974.

sultation with the council" at the beginning of the section; substituted "department" for "state board"; and made minor changes in punctuation.

Amendments

The 1974 amendment deleted "After con-

69-5308. State plan.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board."

69-5310, 69-5311.

Compiler's Notes

Sections 107 and 111, Ch. 349, Laws 1974, substituted "department" throughout these

sections for "state board" and "executive officer."

CHAPTER 54—CESSPOOLS, SEPTIC TANKS, AND PRIVIES

Section

69-5401. License required.

69-5402. Application for license—form and contents.

69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition.

69-5404. Vehicle of licensee—marking.

69-5405. Permit from local health officer—examination—fee.

69-5407. License not required of municipalities.

69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor.

69-5401. License required. No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks or privies, and disposal of waste therefrom unless licensed by the department and the license validated by the health officer or local sanitarian in each county where business is to be conducted. The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974.

each county where business is to be conducted" at the end of the first sentence; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state department of health" in two places and substituted "department" for "state board of health" at the end of the final sentence.

Amendments

The 1971 amendment inserted "and disposal of waste therefrom" in the first sentence; added "and the license validated by the health officer or local sanitarian in

69-5402. Application for license—form and contents. Application for a license is made to the department on application forms procured from the local health officer or sanitarian in the county of applicant residence. The application shall show:

- (1) the name in full, and if a partnership, the name of each partner;
- (2) place of business and the counties in which business is to be conducted;

(3) and (4) * * * [Same as parent volume.]

(5) a statement that the applicant will comply with rules adopted by the department under this chapter;

(6) * * * [Same as parent volume.]

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974.

Amendments

The 1971 amendment added "on application forms procured from the local health officer or sanitarian in the county of applicant residence" at the end of the

first sentence; added "and the counties in which business is to be conducted" at the end of subdivision (2); and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state department of health" in the first sentence and substituted "department" for "state board" in subdivision (5).

69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition. Licenses issued by the department shall be titled "Montana Sanitary Licensee," and numbered consecutively beginning with the number ten (10). Licenses expire on December 31 of each calendar year. Licenses are not transferable. The fee for each license is twenty-five dollars (\$25) payable at the time of application for license. Twenty dollars (\$20) of the fee shall be deposited with the county treasurer in the county of licensee residence and five dollars (\$5) forwarded with the application to the department. The state fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of a sanitarian to enforce this act. The department shall return the license to county of licensee residence for issue.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974.

Amendments

The 1971 amendment increased the license fee from \$5.00 to \$25; added "payable at the time of application for license" at the end of the fourth sentence; sub-

stituted the fifth, sixth, seventh and eighth sentences for a sentence reading "Fees shall be deposited in the state general fund"; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state department of health" in three places.

69-5404. Vehicle of licensee—marking. Persons licensed shall paint on the side of each vehicle using the words "Montana Sanitary Licensee" and immediately under those words shall paint "License No. (insert number of license)." License numbers shall be at least one and one-half (1½) inches high and in a distinct color contrasting with the background.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971.

Amendments

The 1971 amendment substituted "using" for "used" after "each vehicle."

69-5405. Permit from local health officer—examination—fee. Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a validation signature on the license from the local health officer or sanitarian, having jurisdiction in each county in which the business will be conducted. The license shall be invalid until said validation signature is affixed. The validation signature shall be affixed only after satisfactory evidence of the applicant's knowledge of sanitary principles, laws and ordinances; reliability in observing

sanitary laws; and ability to clean the septic tank, cesspool or privy without endangering human health or safety and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971.

Amendments

The 1971 amendment substituted "validation signature on the license" for "permit" in the first sentence; substituted "or sanitarian" for "or his authorized representative" after "local health officer" in the first sentence; added "in each county in which the business will be conducted" at the end of the first sentence; inserted a new second sentence; substituted "The validation signature shall be affixed" for "The permit shall be issued" at the beginning of the present third sentence;

substituted "evidence" for "examination" in the present third sentence; added "and that the licensee has a permanent approved disposal site or is knowledgeable of the restrictions on disposal site locations" at the end of the third sentence; deleted two final sentences reading "The permit shall contain the name of the applicant, date of cleaning, name and address of the owner of the cesspool, septic tank or privy, and the place and means of disposing of the waste. The person issuing the permit shall be paid a fee of one dollar (\$1.00)"; and made minor changes in phraseology and punctuation.

69-5406. Rules for administration of chapter—adoption.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state board."

69-5407. License not required of municipalities. The license provisions of this chapter do not apply to any county or municipality or other local, state or federal governmental agency which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities or other local, state or federal governmental agencies shall comply with rules adopted by the department for cleaning cesspools, septic tanks, or privies, and disposal or wastes from cesspools, septic tanks, or privies.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974.

Amendments

The 1971 amendment inserted references to other local, state and federal government agencies in the first and second sen-

tences; added "and disposal or wastes from cesspools, septic tanks or privies" at the end of the section; and made a minor change in phraseology.

The 1974 amendment substituted "department" for "state board of health" in the second sentence.

69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor. State and local health officers or sanitarians, are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer or sanitarian made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than one hundred dollars (\$100), imprisoned for not more than thirty (30) days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971.

Amendments

The 1971 amendment inserted references to sanitarians in two places after references to health officers.

Effective Date

Section 8 of Ch. 76, Laws 1971 read: "This act is effective January 1, 1972."

CHAPTER 55—PUBLIC SWIMMING POOLS AND BATHING PLACES

Section

69-5502. Definitions.

69-5502. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests;
or

(b) medicinal hot water baths for individual use.

(2) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(3) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

History: En. Sec. 202, Ch. 197, L. 1967;
amd. Sec. 24, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology.

69-5503. Sanitarian—rules—adoption by department.**Compiler's Notes**

Section 104, Ch. 349, Laws 1974, substituted "department of health and environ-

mental sciences" in this section for "state board of health."

69-5504. Sanitation—supervision by department.**Compiler's Notes**

Section 109, Ch. 349, Laws 1974, sub-

stituted "department" in this section for "state department of health."

69-5505. Inspections by health authorities, etc.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" throughout this section for "state board."

69-5507. Repealed.**Repeal**

Section 69-5507 (Sec. 207, Ch. 197, L. 1967), relating to construction plans of

public swimming pools, was repealed by Sec. 16, Ch. 504, Laws 1977.

69-5510, 69-5511.**Compiler's Notes**

Section 107, Ch. 349, Laws 1974, substi-

tuted "department" in these sections for "state board."

CHAPTER 56—TOURIST CAMPGROUNDS AND TRAILER COURTS

Section

69-5601. Definitions.

69-5602. Department authorized to adopt rules.

69-5603. License required—inspections.

69-5604. Application for license—form and contents—license fee—duration of license.

69-5605. Inspection of grounds.

69-5606. Cancellation or denial of license—procedure.

69-5607. Violations—penalties—disposition of fines.

69-5601. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Tourist campground" means a place used for public camping primarily by automobile tourists where persons can camp or secure tents or park individual trailers or truck trailers for camping and sleeping purposes.

(2) "Trailer court" means a parcel of land offered to the public and usually designated a trailer court, trailer park or mobile home park upon which two (2) or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes.

(3) "Board" means the state board of health and environmental sciences.

(4) "Department" means the state department of health and environmental sciences.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating or owning or offering the services of a tourist campground or trailer court.

History: En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973.

Amendments

The 1973 amendment divided the former section into the preliminary clause and subdivision (1); combined two sentences of subdivision (1) into one by deleting "The

term includes places" at the beginning of the former second sentence; substituted "tents" in subdivision (1) for "cabins or tents, trailer courts, and similar public places"; added "or park individual trailers or truck trailers for camping and sleeping purposes" at the end of subdivision (1); and added subdivisions (2) to (5).

69-5602. Department authorized to adopt rules. The department shall adopt rules for constructing and operating tourist campgrounds and trailer courts to insure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967; amd. Sec. 2, Ch. 383, L. 1973; amd. Sec. 13, Ch. 140, L. 1977.

Amendments

The 1973 amendment substituted "de-

partment" for "state board of health"; and inserted "construction and" and "and trailer courts."

The 1977 amendment substituted "constructing" for "construction."

69-5603. License required—inspections. A person operating a tourist campground or trailer court shall:

(1) obtain a license from the department;

(2) permit inspections by state or local health officers, sanitarians, or other authorized persons at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967; amd. Sec. 3, Ch. 383, L. 1973; amd. Sec. 14, Ch. 140, L. 1977.

Amendments

The 1973 amendment inserted "or trailer court" in the preliminary clause; deleted the former subdivision (2) requiring post-

ing of state board of health rules; re-numbered subdivision (3) as (2) and inserted "sanitarians or other authorized persons" in subdivision (2).

The 1977 amendment inserted "or" after "permit inspections by state" in subdivision (2); and made minor changes in punctuation.

69-5604. Application for license—form and contents—license fee—duration of license. (1) Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of twenty dollars (\$20).

Licenses expire on December 31 of the year in which they are issued. Fees collected by the department shall be deposited in the state general fund.

(2) Before June 30 of each year, the department shall pay to a local board of health as established under section 69-4504, 69-4506, or 69-4507, an amount from any general fund appropriation to the department which is for the purpose of inspecting establishments licensed under this act; provided, however, that there is a functioning local board of health, and that the local board of health, local health officers, and sanitarians assist in the enforcement of the provisions of this chapter and the rules adopted under it.

(3) Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction which are licensed under this section. The funds received by the local board of health shall be deposited with the appropriate local fiscal authority and shall be in addition to the funds appropriated under section 69-4508.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975.

Amendments

The 1973 amendment increased the application fee from five dollars to ten dol-

lars; and added the fourth sentence in subsection (1).

The 1975 amendment inserted the subsection (1) designation; increased the application fee from \$10 to \$20; and added subsections (2) and (3).

69-5605. Inspection of grounds. The department or local health officer or sanitarian shall:

(1) inspect tourist campgrounds and trailer courts during reasonable hours as necessary;

(2) supervise the inspection of tourist campgrounds or trailer courts by local health officers, sanitarians or other authorized persons as necessary.

History: En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973.

Amendments

The 1973 amendment deleted former subsection (1) providing for denial or revocation of licenses; deleted the numerical designation for former subsection (2); in-

serted "or local health officer or sanitarian" in the preliminary clause; redesignated former subdivisions (2) (a) and (2) (b) as (1) and (2); inserted references to trailer courts in subdivisions (1) and (2); and deleted former subdivision (2) (c), providing for a \$5 license fee.

69-5606. Cancellation or denial of license — procedure. (1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

(2) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation or the charge involved and an opportunity to answer at a hearing before the department to show cause,

if any, why the license should not be denied or canceled. In this case, the licensee must make a written request to the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter, or a rule effective under this chapter.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975.

Amendments

The 1974 amendment substituted "board" for "state board" in the caption; substituted "board of health and environmental sciences" for "state board" in the first sen-

tence; substituted "board" for "department" in the second sentence; substituted "tenth day" for "sixth day" in the second sentence; and made minor changes in punctuation.

The 1975 amendment completely rewrote this section. For prior text, see parent volume and 1974 amendment note.

69-5607. Violations—penalties—disposition of fines. A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$50 or more than \$100 for the first offense, and not less than \$75 or more than \$200 for the second offense; and for the third and subsequent offenses, he shall be punished by a fine of not less than \$200 and imprisonment in the county jail not to exceed 90 days. Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973; amd. Sec. 3, Ch. 506, L. 1975; amd. Sec. 15, Ch. 140, L. 1977.

Amendments

The 1973 amendment substituted "department" for "state board" in the first sentence; inserted "or trailer court" in the second sentence; and made minor changes in style.

The 1975 amendment increased the minimum fine from \$25 to \$50; established separate penalties for subsequent offenses; and made minor changes in phraseology. For prior text, see parent volume and 1973 amendment note.

The 1977 amendment substituted "a rule" for "regulation" near the beginning of the first sentence; and made minor changes in phraseology and style.

Separability Clause

Section 7 of Ch. 383, Laws 1973 read "It is the legislative intent that if any section, subsection, sentence, clause or provision of the act is held invalid, the remainder of the act shall not be affected."

Effective Date

Section 4 of Ch. 506, Laws 1975 read "This act is effective January 1, 1976."

CHAPTER 57—GENERAL PENALTY

Section

69-5701. Violations of public health laws or rules of board or department.

69-5701. Violations of public health laws or rules of board or department. Anyone who violates a rule adopted by the board of health and environmental sciences or the department of health and environmental sciences, for which no penalty is specified, is guilty of a misdemeanor.

History: En. Sec. 221, Ch. 197, L. 1967; amd. Sec. 82, Ch. 349, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion which read: "Anyone who violates any provision of this act, or any rule adopted by the state board under the provisions of this act, for which no penalty is specified, is guilty of a misdemeanor."

CHAPTER 58—CONTROL OF IONIZING RADIATION

Section

- 69-5803. Definitions.
- 69-5804. State radiation control agency.
- 69-5806. Licensing and registration.
- 69-5812. Administration procedure and judicial review.
- 69-5817. Definitions.
- 69-5818. Disposal of radioactive material prohibited.
- 69-5819. Exceptions.
- 69-5820. Penalty.
- 69-5821. Exclusion.

69-5803. Definitions. (1) "By-product material" means a radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and X rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles but not sound or radio waves or visible, infrared, or ultraviolet light.

(3) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing quantities of by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(4) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing quantities of by-product, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(5) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, any successor thereto, or federal agencies licensed by the atomic energy commission.

(6) "Source material" means uranium, thorium, or any other material which the department or the United States atomic energy commission declares by order to be source material or ores containing one or more of the foregoing materials, in such concentration as the department or the atomic energy commission declares by order to be source material after the atomic energy commission has determined the material in such concentration to be source material.

(7) "Special nuclear material" means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the

department or the United States atomic energy commission, or any successor thereto, declares by order to be special nuclear material or any material artificially enriched by any of the foregoing, but does not include source material.

(8) "Registration" means the registering by the legal owner, user, or authorized representative with the department of sources of ionizing radiation in the manner prescribed by rule.

(9) "Department" means the department of health and environmental sciences.

History: En. Sec. 3, Ch. 108, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 16, Ch. 140, L. 1977.

Amendments

The 1974 amendment substituted "department of health and environmental sciences" throughout this section for "board of health."

The 1977 amendment substituted "rules" for "regulations" near the beginning of subsection (3); deleted "of health and environmental sciences" after "department" throughout the section; added subsection (9); and made minor changes in phraseology, punctuation and style.

69-5804. State radiation control agency. (1) The department is the state radiation control agency.

(2) Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this act.

(3) The department may for the protection of the occupational and public health and safety:

(a) Develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation.

(b) Develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of by-product, source, radioactive waste materials, and special nuclear materials, and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas, and sources, and methods, and effectiveness of controlling individuals in posted and restricted areas.

(c) Adopt rules relating to control of other sources of ionizing radiation. These rules shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.

(d) Advise, consult, and co-operate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation.

(e) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private.

(f) Encourage, participate in, or conduct studies, investigations, train-

ing, research, and demonstrations, relating to control of sources of ionizing radiation.

(g) Collect and disseminate information relating to control of sources of ionizing radiation, including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this act and any administrative or judicial action pertaining thereto;

(iii) Maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted and proceedings thereon.

History: En. Sec. 4, Ch. 103, L. 1967; amendment for "board of health" in subsections (1), (2), and (3) and made numerous minor changes in phraseology, punctuation, and style.

Amendments

The 1974 amendment substituted "de-

69-5805. Repealed.

Repeal

Section 69-5805 (Sec. 5, Ch. 108, L. 1967), relating to the radiation advisory

committee, was repealed by Sec. 113, Ch. 349, Laws of 1974.

69-5806. Licensing and registration. (1) The department shall provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. The rules shall provide for amendment, suspension, or revocation of licenses pursuant to 69-5812.

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department considers reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department considers necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require an application or statement to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this act and no right to possess or utilize sources of ionizing radiation granted by any license may be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this act.

(6) The department may require registration and inspection of persons

dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of the users will not constitute a significant risk to the health and safety of the public.

(8) A report of investigation or inspection or information concerning trade secrets or secret industrial processes obtained under this act shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the department.

(9) Rules promulgated pursuant to this act may provide for recognition of such other state or federal licenses as the department considers desirable, subject to such registration requirements as the department prescribes.

History: En. Sec. 6, Ch. 108, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 17, Ch. 140, L. 1977.

Amendments

The 1974 amendment substituted "department" throughout the section for "board of health."

The 1977 amendment deleted references to regulations after references to rules throughout the section; substituted "69-5812" for "69-5811" at the end of subsection (1); and made minor changes in phraseology, punctuation and style.

69-5807 to 69-5810.

Compiler's Notes

Section 107, Ch. 349, Laws 1974, substituted

"department" throughout these sections for "board of health."

69-5812. Administration procedure and judicial review. (1) In a proceeding under this act for granting, suspending, revoking, or amending a license, or for determining compliance with, or granting exceptions from, rules adopted under this chapter, the board of health and environmental sciences shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding, and shall admit the person as a party to the proceeding.

(2) When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this act to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately, but on application to the board, shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within thirty (30) days after the hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967; amd. Sec. 84, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "board of health and environmental sciences" for "board of health" in subsection (1); substituted "department" for "board of

health" in two places in the first sentence of subsection (2); substituted "board" for "board of health" in the second sentence of subsection (2); inserted "by the board" following "or revoked" in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

69-5813, 69-5814.

Compiler's Notes substituted "department" in these sections for
 Section 107, Ch. 349, Laws 1974, sub- "board of health."

69-5816. Penalties.

Compiler's Notes tuted "department" throughout this section
 Section 107, Ch. 349, Laws 1974, substi- for "board of health."

69-5817. Definitions. The definitions used in this act are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. As used in this act the following definitions apply:

(1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Special nuclear material" means (a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States nuclear regulatory commission determines to be special nuclear material, or (b) any material artificially enriched by any of the foregoing.

(3) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389 (b).

(4) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(5) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

History: En. 69-5817 by Sec. 1, Ch. 68, L. 1977.	Title of Act An act to prohibit the disposal in Montana of large quantity radioactive materials produced in other states; defining terms; and providing a penalty.
--	--

69-5818. Disposal of radioactive material prohibited. No person may dispose of in Montana large quantity radioactive material produced in other states.

History: En. 69-5818 by Sec. 2, Ch. 68,
L. 1977.

69-5819. Exceptions. Byproduct material possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis and treatment, geophysical surveying and other purposes licensed by the United States nuclear regulatory commission shall be excepted from 69-5817 through 69-5821 during the period of possession, use, and transportation prior to disposal.

History: En. 69-5819 by Sec. 3, Ch. 68,
L. 1977.

69-5820. Penalty. A person convicted of violating this act is guilty of a misdemeanor and shall be fined an amount not less than \$250 for each offense. In this act, each day of violation constitutes a separate offense.

History: En. 69-5820 by Sec. 4, Ch. 68,
L. 1977.

69-5821. Exclusion. Nothing in 69-5817 through 69-5821 precludes the construction of nuclear facility approved under the requirements of the Major Facility Siting Act.

History: En. 69-5821 by Sec. 5, Ch. 68,
L. 1977.

CHAPTER 59—WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

Section

69-5902. Definitions.

69-5903. Board to assist department—meetings and organization—examination of candidates for certification.

69-5906. Operator of treatment plant or distribution system to be certified—certification of operators certified by other agency.

69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate.

69-5908. Application for operator's certificate—payment of fee—use of proceeds.

69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement.

69-5910. Rules of board.

69-5911. Unlawful to operate treatment plant or distribution system without certified operator.

69-5902. Definitions. Unless the context requires otherwise, in this act:

(1) "Board" means the board of water and waste water operators provided for in section 82A-612.

(2) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or waste water treatment plant. Operators of plants or systems serving less than ten (10) families are exempt from this chapter.

(3) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(4) "Waste water treatment plant" means facilities designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(5) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(6) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or

other supply source to the premises of the consumer and which serves ten (10) or more families or supplies an industry employing ten (10) or more persons.

(8) "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(9) "Montana's waters" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "board of water and waste-water operators provided for in section 82A-612" for "board

of certification for water and waste-water operators" in subdivision (1); substituted the definition of "Department" for a definition of "Director" in subdivision (3); substituted "department" for "director" in subdivision (8); and made minor changes in phraseology and punctuation.

69-5903. Board to assist department—meetings and organization—examination of candidates for certification. (1) The board shall advise and assist the department in the administration of the certification program. The board shall serve as an advisory board to the department in actions relating to the qualifications of water and waste water treatment plant operators.

(2) Annually when new members are appointed to the board a chairman shall be elected at the next board meeting.

(3) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification. Additional meetings may be called by the chairman, or on written request of four (4) members of the board when necessary to carry out this chapter. Four (4) members constitute a quorum. The members of the board shall receive a fee of twenty dollars (\$20) per day while in session, plus travel expenses, as provided for in sections 59-538, 59-539, and 59-801, including travel while discharging their official duties.

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975.

Amendments

The 1971 amendment inserted the second sentence, attaching the certification board to the state board of health, in subsection (1).

The 1974 amendment rewrote this sec-

tion to delete specific provisions pertaining to the appointment of the board of certification by the governor and the qualifications and terms of the members, and a provision covering the examination of candidates for certification.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "the cost of actual and necessary expenses" near the end of subsection (3).

69-5904, 69-5905.

Compiler's Notes

Section 111, Ch. 349, Laws 1974, substi-

tuted "department" in these sections for "director."

69-5906. Operator of treatment plant or distribution system to be certified—certification of operators certified by other agency. Water and waste water treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or waste water supply system to be supervised. However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on the effective date of the act. A certificate so issued will be valid only in that plant. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state, on presentation to the board of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under section 69-5903(3) and section 69-5905.

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974.

Amendments

The 1974 amendment deleted "One (1) year following the effective date of this act," at the beginning of the section; sub-

stituted "department" for "director" in the first sentence; added "on July 1, 1967" at the end of the second sentence; substituted "section 69-5903(3)" for "section 69-5903 (4)" near the end of the section; and made minor changes in phraseology and punctuation.

69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate. The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise. The certificate shall be prominently displayed in the office of the operator.

(1) Certificates continue in effect unless revoked by the department, but remain the property of the department and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

(2) The department may revoke the certificate of an operator following a hearing by the department, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. A person who has his certificate revoked by the department may appeal to the board for a rehearing within ten (10) days of notification by the department, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

(3) Operators who terminate employment may retain their certificate for two (2) years, providing that all other requirements are met. After two (2) years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates

of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "department" for "director" in the first sen-

tence of the section and in six places in subsections (1) and (2); substituted "property of the department" for "property of the board" in the first sentence of subsection (1); and made minor changes in phraseology and punctuation.

69-5908. Application for operator's certificate—payment of fee—use of proceeds. A person desiring to engage in the operation of a water treatment plant, water distribution system, or waste water treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee, of the same amount as the license cost set forth in section 69-5909, for the filing of each application and shall not act on an application until the fee has been paid. Filing and certification fees shall be deposited with the state treasurer in the "Board of Water and Waste Water Operators Account" in the department earmarked revenue fund and shall be used to pay the expenses of the board and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys. In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974.

Amendments

The 1971 amendment inserted "state department of health" in the third sentence; inserted the fourth sentence; and made a minor change in phraseology.

The 1974 amendment substituted "board" for "department" in the first, second, and

final sentences; substituted "Board of Water and Waste Water Operators Account" for "Water and Waste Water Operators Certification Examining Board Account" in the third sentence; substituted "department earmarked revenue fund" for "state department of health earmarked revenue fund" in the third sentence; inserted "and department" after "board" in the third sentence; and made minor changes in phraseology and punctuation.

69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement. Certificates issued under this chapter shall be renewed annually before July 1. After the payment of the initial fee under section 69-5908, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the following schedule:

Class I—twenty dollars (\$20)

Class II—fifteen dollars (\$15)

Class III—ten dollars (\$10)

Class IV—five dollars (\$5)

Class V—three dollars (\$3)

A certificate issued after July 1 expires the following June 30. If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the board. If the certificate remains suspended for a period of more than thirty (30) days it shall be revoked by the board; however, the board, before this revocation, shall notify the certificate holder

by certified mail at the address on the issued certificate of its intention to revoke, at least ten (10) days before the time set for action to be taken by the board on the certificate. A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches. If a person whose certificate has been revoked through his own fault desires to continue as a water or waste water plant operator, he must make application to the department under section 69-5908. Successful completion of an examination may be required at the discretion of the board. Notice of suspension shall be given to certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

History: En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "remit to the department" for "remit to the

board" in the first sentence following the schedule; substituted "application to the department" for "application to the board" near the end of the section; and made numerous minor changes in phraseology and punctuation.

69-5910. Rules of board. The board shall adopt rules necessary to carry out this chapter. Before the rules are effective, they shall be approved by the department. The rules shall include, but are not limited to, provisions establishing the basis for classification of treatment plants under section 69-5904, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this act.

History: En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974.

Amendments

The 1971 amendment inserted the second sentence.

The 1974 amendment deleted "and regulations" following "rules" in the caption and throughout the section; substituted "department" for "state board of health"

at the end of the second sentence; and made minor changes in phraseology and punctuation.

Separability Clause

Section 4 of Ch. 306, Laws 1971 read: "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held invalid, the remainder of this act shall continue in full force and effect."

69-5911. Unlawful to operate treatment plant or distribution system without certified operator. It is unlawful for a person, firm, or corporation both municipal and private, operating a waste water treatment plant, water treatment plant or water distribution system to operate it unless the competency of the operator is certified to by the department under this act. Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this act.

History: En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974.

Amendments

The 1974 amendment deleted "On or after one (1) year following the effective

date of this act" at the beginning of the section; substituted "department" for "director" near the end of the first sentence; and made minor changes in phraseology and punctuation.

CHAPTER 60—REFUSE DISPOSAL DISTRICTS

- Section
69-6002. Definitions.
69-6004. Action by city or town council—effect—notice.
69-6005. Written protest—hearing—effect.
69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference.
69-6007. Service fees—maintenance assessments—disposal fee.
69-6010. Powers and duties of board.
69-6012. Joint districts.
69-6013. Duty of county attorney—conflict of interest.

69-6002. Definitions. As used in this act unless the context indicates otherwise:

“Commissioners” means the board of county commissioners.

“Family residential unit” means the residence of a single family.

“Refuse” means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

“Refuse disposal district” means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

“Board” means board of directors as provided for in section 69-6009, R. C. M., 1947, and section 4 [69-6012] of this act.

History: En. Sec. 2, Ch. 71, L. 1969; **Amendments**
amd. Sec. 1, Ch. 136, L. 1971.

The 1971 amendment added the definition of “board.”

69-6004. Action by city or town council—effect—notice. (1) Upon passage of such resolution of intention, the commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur, in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners. If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said town or city in the district, but may continue to develop the district, but excluding said town or city.

(2) The commissioners must give notice of the passage of the resolution of intention and resolution of concurrence, if applicable, a notice describing the general characteristics of the collection system and estimated costs; designating the time and place where the commissioners will hear and pass upon protests made against the operation of the proposed district; and stating that a description of the boundaries for the proposed district is included in the resolution on file in the county clerk's office. The notice shall be published in the newspaper published nearest to the place where the proposed district is to be created for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper; posted in three (3) public places within the boundaries of the proposed district; and a copy mailed by first class mail to every person, firm, or

corporation having real property within the proposed district listed upon the last completed assessment list for county taxes the same day the notice is first published.

History: En. Sec. 4, Ch. 71, L. 1969; and rephrased the language in subsection
amd. Sec. 1, Ch. 293, L. 1973. (2); and added at the end of subsection

Amendments

The 1973 amendment divided the section into numbered subsections; rearranged (2) the clause providing for mailing notice to property owners on the assessment list.

69-6005. Written protest—hearing—effect. At any time within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, any owner of property liable to be assessed for said service may make written protest against the proposed service. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the commissioners, after the expiration of the time within [which] such said protest may be so made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed service is made by the owners of more than fifty (50) per cent of the family residential units; each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining per cent of protest; in the proposed district, no further proceedings shall be taken by the commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts, shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district. The commissioners may adjourn said hearings from time to time.

History: En. Sec. 5, Ch. 71, L. 1969; tice provided in section 69-6004" for "pas-
amd. Sec. 2, Ch. 293, L. 1973. sage of the resolution of intention" in
the first sentence of the first paragraph.

Amendments

The 1973 amendment substituted "no-

69-6006. Jurisdiction to order improvements—passage of resolution—brief description and reference. When no protests have been delivered to the county clerk within thirty (30) days after the date of the first publication of the notice provided in section 69-6004, or when a protest shall have been found by said commissioners to be insufficient, or shall have been overruled, immediately thereupon, the commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the commissioners shall pass a resolution creating the said refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be suffi-

cient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars.

History: En. Sec. 6, Ch. 71, L. 1969; amd. Sec. 3, Ch. 293, L. 1973.

vided in section 69-6004" for "of the passing of the resolution of intention" near the beginning of the first paragraph.

Amendments

The 1973 amendment substituted "pro-

69-6007. Service fees—maintenance assessments—disposal fee. To defray the cost of maintenance and operation of said refuse disposal district, the board, shall establish a fee for service with approval of the county commissioners. This fee shall be assessed to all units in the district that are receiving a service for the purpose of maintenance and operation of said district. The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced. In no case shall the fee for disposal service exceed one half ($\frac{1}{2}$) the total fee for both collection and disposal services. The month the service begins the department of revenue or its agents shall ensure that the amount of this fee is placed on the tax notices to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property. All fees and other moneys received by the district shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which said refuse disposal district was created. Warrants upon such funds shall be drawn by the board of county commissioners upon presentation of claims approved by the board. Fees and other moneys collected by joint county refuse disposal districts may be administered by one (1) county treasurer's office upon mutual agreement by the county commissioners of any joint refuse disposal district.

History: En. Sec. 7, Ch. 71, L. 1969; amd. Sec. 2, Ch. 136, L. 1971; amd. Sec. 48, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "board" for "commissioners" in the first sentence; added "with approval of the county commissioners" at the end of the first sentence; substituted a new second sentence for a sentence reading "The commissioners shall assess the entire cost of maintenance and operation of said district on each family residential unit that is receiving

this service"; inserted "The fees shall be based upon a family residential unit, and" at the beginning of the third sentence; added the fifth through ninth sentences; and made minor changes in phraseology.

The 1973 amendment substituted "department of revenue or its agents" for "county assessor" in the fifth sentence in order to implement article VIII, section 3 of the 1972 constitution; and substituted "shall ensure that the amount of this fee is placed" in the fifth sentence for "shall place the amount if this fee."

69-6010. Powers and duties of board. The board of a refuse disposal district established and organized under this act have the following powers and duties with the approval of the county commissioners of the counties involved:

- (1) To develop and administer a program for the collection or disposal of refuse in the district.
- (2) To employ personnel.
- (3) To purchase, rent, or execute leasing agreements for such equip-

ment and material necessary for carrying on an effective refuse collection or disposal program.

(4) To co-operate with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs.

(5) To receive gifts, grants, or donations for the purpose of advancing the program; to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes.

(6) To enforce department of health and environmental sciences or local board of health rules pertaining to the storage, collection, and disposal of refuse.

(7) To apply for and receive from the federal government or the state government on behalf of the refuse disposal district moneys appropriated by federal or state legislative bodies for aiding these programs.

(8) To borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the moneys received from the fees levied under this act.

(9) The board may implement its proposed program a section at a time. If a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service.

History: En. Sec. 10, Ch. 71, L. 1969; amd. Sec. 3, Ch. 136, L. 1971; amd. Sec. 93, Ch. 349, L. 1974.

Amendments

The 1971 amendment substituted the preliminary paragraph for a paragraph reading "The board of directors for the refuse disposal district shall have power"; inserted "or local" before "government" in subdivision (4); added the clause relating to land acquisition at the end of subdivision (5); inserted "or the state government" in subdivision (7); substituted

"federal or state legislative bodies" for "Congress" in subdivision (7); substituted "any loaning agency" in subdivision (8) for the "the federal government"; added subdivision (9); and made minor changes in phraseology and punctuation.

The 1974 amendment substituted "department of health and environmental sciences or local board of health rules" for "state or local board of health rules and regulations" in subdivision (6) and made minor changes in phraseology and punctuation.

69-6012. Joint districts. Joint refuse disposal districts are districts which encompass two (2) or more counties or parts thereof. A joint refuse disposal district may be created in the following manner: The commissioners of each county affected will create the district following the procedure as prescribed under sections 69-6003, 69-6004, 69-6005, and 69-6006, R. C. M., 1947. The commissioners shall appoint a joint board of directors composed of at least five (5) members, each of whom shall be property owners in the said district. The board of directors for a joint district will consist of one (1) commissioner from each county involved, one (1) member from each of the incorporated cities or towns that are included in the district, and one (1) member from each of the county or city-county boards of health. The rest of the joint board of directors shall consist of interested citizens distributed equally throughout the district, and the appointments shall be acceptable to all groups of county commissioners.

History: En. Sec. 4, Ch. 136, L. 1971.

69-6013. Duty of county attorney—conflict of interest. The county attorney shall be the legal adviser of the refuse disposal districts and boards within the county of his jurisdiction and shall prosecute and defend all suits to which the districts may be a party. A district or board may employ special legal counsel to defend any such suits in the event a conflict of interest would prohibit such defense by county attorney.

History: En. Sec. 5, Ch. 136, L. 1971;
amd. Sec. 1, Ch. 179, L. 1973.

Repealing Clause

Section 6 of Ch. 136, Laws 1971 read
"Section 16-1031, R. C. M., 1947, is re-
pealed."

Amendments

The 1973 amendment added the second sentence.

CHAPTER 61—CONSENT BY MINORS FOR MEDICAL SERVICES

Section

- 69-6101. Validity of consent of minor for health services.
- 69-6102. Divulgence of information by physician.
- 69-6103. Financial responsibility of a consenting minor.
- 69-6104. Emergencies and special situations when consent requirements differ.
- 69-6105. Immunity and responsibility of hospital, public clinic or physician.
- 69-6105.1. Health professional defined.
- 69-6106. Psychiatric or psychological counseling under urgent circumstances.
- 69-6107. Immunity of physician or psychologist.

69-6101. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who possesses or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including venereal disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

History: En. Sec. 1, Ch. 189, L. 1969;
amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23,
Ch. 100, L. 1977.

Amendments

The 1974 amendment rewrote this section to redefine the circumstances under

which a minor may validly consent to receive medical or surgical care.

The 1977 amendment inserted the subsection (1) designation at the beginning of the section; redesignated former subdivisions (1) through (4) as subdivisions (1) (a) through (1)(d); inserted "If emergency care is rendered" at the beginning of the last sentence of subdivision (1)(d);

substituted "under the circumstances mentioned in this subsection (1)" for "in conditions mentioned in subsections (1), (2), (3), or (4) of this section" at the end of subdivision (1)(d); redesignated former subdivisions (5) and (6) as subsections (2) and (3); and made minor changes in phraseology, punctuation and style.

69-6102. Divulgence of information by physician. (1) A treating physician or other health professional, may, but shall not be obligated to, inform the spouse, parent, custodian or guardian of any such minor in the circumstances as enumerated in section 69-6101, of any treatment given or needed when:

(a) in the judgment of the health professional severe complications are present or anticipated; or

(b) major surgery or prolonged hospitalization is needed; or

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public; or

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication or any other legal basis of liability. When the minor is found not to be pregnant, or not afflicted with venereal disease, or not suffering from a drug or substance abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this act, without the consent of the minor.

History: En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974.

Amendments

The 1974 amendment rewrote this section to insert the references to "health

professional" and to redefine the circumstances under which the treating physician or other health professional is not obligated to inform the spouse, parent, custodian or guardian of a minor of treatment given or needed.

69-6103. Financial responsibility of a consenting minor. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. The minor so consenting for such health services shall thereby assume financial responsibility for the cost of said services except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

History: En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion which provided that the act applied to a minor who professed to be in need of services even if the minor's suspicions of pregnancy or venereal disease were not subsequently substantiated.

69-6104. Emergencies and special situations when consent requirements differ. (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment without compensation to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians if a physician determines the health service should be given.

(4) Self-consent of minors shall not apply to sterilization or abortion.

History: En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974.

Amendments

The 1974 amendment rewrote this section which read: "Any consent given pur-

suant to the provisions of this act by a minor shall not be deemed to be valid if, following a delivery or other termination of a pregnancy, it is determined that surgery not directly connected with the pregnancy is required or shall be requested."

69-6105. Immunity and responsibility of hospital, public clinic or physician. (1) No physician, surgeon, dentist, health or mental health care facility may be compelled to treat a minor on his own consent against their best judgment.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

History: En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974.

Amendments

The 1974 amendment rewrote this section which read: "In any case arising under the provisions of this act the hospital, public clinic, or physician, licensed

to practice medicine in this state, who provides the care or services or who performs medical or surgical care or services shall incur no civil or criminal liability by reason of having provided the care or services, but such immunity shall not apply to any negligent acts or omissions."

69-6105.1. Health professional defined. Health professional as used in this act shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists or dentists.

History: En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974.

69-6106. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psy-

chiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons, and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be as valid and binding as if the minor had achieved majority. That is, such minor has the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent may not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the psychiatric or psychological counseling of such minor. However, no parent may be obligated for the cost of such counseling without his consent.

History: En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977.

except that such immunity shall not apply to negligent acts or omissions.

Title of Act

An act providing that minors may give legal consent to obtain psychiatric or psychological counseling where need for such counseling is urgent; that such consent shall be binding on the minor and not subject to later disaffirmance by reason of such minority; that the consent of no other person shall be necessary in order to authorize care or services provided to such minor; providing that physicians or licensed psychologists who provide care or services under the terms of this act shall incur no civil or criminal liability,

Amendments

The 1977 amendment deleted "the infancy of said minor and any contrary provisions of law notwithstanding" after "legal age and capacity" in the second sentence; substituted "may" for "shall" near the end of the second sentence and in the last sentence; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 25 of Ch. 100, Laws 1977 read "Sections 10-207, 10-208, 10-209, and 10-210, R.C.M. 1947, are repealed."

69-6107. Immunity of physician or psychologist. In any case arising under the provisions of this act the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: En. Sec. 2, Ch. 315, L. 1971.

CHAPTER 62—ALCOHOL AND DRUG DEPENDENCE

69-6201. [Transferred.]

Compiler's Notes

Section 6, Ch. 280, Laws of 1975, renumbered this section as sec. 80-2701.

69-6202. Repealed.

Repeal

Section 69-6202 (Sec. 2, Ch. 303, L. 1969), relating to the commission on al-

cohol and drug dependence, was repealed by Sec. 20, Ch. 302, Laws of 1974; Sec. 113, Ch. 349, Laws of 1974.

69-6203 to 69-6207. [Transferred.]**Compiler's Notes**

Section 6, Ch. 280, Laws of 1975, renun-

bered these sections as sec. 80-2702 and secs. 80-2704 to 80-2707.

69-6211. [Transferred.]**Compiler's Notes**

Section 6, Ch. 280, Laws of 1975, renun-
bered this section as sec. 80-2708.

Section numbers 69-6208 through 69-6210 were never used by the legislature.

69-6212. [Transferred.]**Compiler's Notes**

Section 2, Ch. 280, Laws of 1975, renun-
bered this section as sec. 80-2709.

69-6213 to 69-6224. [Transferred.]**Compiler's Notes**

Section 6, Ch. 280, Laws of 1975, renun-

bered these sections as secs. 80-2710 to 80-2721.

69-6225. [Transferred.]**Compiler's Notes**

Section 3, Ch. 280, Laws of 1975, renun-
bered this section as sec. 80-2722.

CHAPTER 64—VOLUNTARY STERILIZATION—STATE BOARD OF EUGENICS**Section**

- 69-6403. Application for sterilization—hearing—showing required of applicant—designa-
tion of surgeon—written consent.
69-6404. Findings prerequisite to approval—certificate.
69-6406. Certificate that applicant does not possess capacity for voluntary consent to
sterilization—person disregarding certificate guilty of misdemeanor and civil-
ly liable—exception.

69-6402. Repealed.**Repeal**

Section 69-6402 (Sec. 2, Ch. 332, L. 1969;
Sec. 1, Ch. 74, L. 1971), relating to crea-

tion and composition of the state board of
eugenics, was repealed by Sec. 96, Ch. 120,
Laws of 1974.

69-6403. Application for sterilization—hearing—showing required of applicant—designation of surgeon—written consent. (1) The department of institutions shall receive applications by or on behalf of persons covered by this act to be sterilized. Upon receipt of the application, which shall be in any form calculated to apprise the board of eugenics of the desire of the applicant to be sterilized, the board shall conduct a hearing at which the applicant must be present in person for examination by the board and evidence must be presented to establish:

- (a) Whether the applicant is one of the group covered by this act;
- (b) Whether it would be in the best interest of the applicant and the state for the applicant to be sterilized;
- (c) Whether evidence by a qualified clinical geneticist or by someone recognized by the board of eugenics as having expertise in clinical genetics indicates that sterilization is desirable and beneficial to the applicant;

(d) Whether the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with this understanding voluntarily consents thereto;

(e) Whether the medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(f) The method and manner in which the sterilization is to be accomplished.

(2) At the hearing the applicant shall designate the person to perform the sterilization who may be any physician and surgeon licensed to practice medicine in the state. The applicant at the hearing shall sign a written voluntary consent to the sterilization in the form to be provided by the department of institutions.

History: En. Sec. 3, Ch. 332, L. 1969;
amd. Sec. 34, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "department of institutions" for "state board

of eugenics" in the first sentence of subsection (1) and for "board" in subsection (2); substituted "board of eugenics" for "board" in the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

69-6404. Findings prerequisite to approval—certificate. (1) If, after the hearing, the board of eugenics finds:

(a) That the applicant is one of the group covered by this act;

(b) That it would be in the best interest of the applicant and the state that the applicant be sterilized;

(c) That the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with such understanding voluntarily consents in writing thereto;

(d) That such medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(e) That the method and manner in which the sterilization is to be accomplished is by such procedures and under such conditions as are medically approved according to the standards for such procedures in the state;

(f) That the person designated to perform the sterilization is one qualified under this act to perform the sterilization;

(g) That the applicant has in writing voluntarily consented to the medical treatment;

(h) That the parents or guardian, if any exist, have given written consent to the sterilization.

(2) It shall make a certificate reciting the findings and signed by all members of the board. The original of the certificate shall be sent by the department of institutions to the physician designated by the applicant to perform the medical treatment; one copy thereof shall be sent to the applicant or his or her parent, guardian or custodian and one copy to remain in the permanent files of the department of institutions. Upon receipt of the certificate the physician designated to perform the medical treatment may proceed with the medical treatment in accordance with the certificate.

Arrangements for the medical treatment shall be made between the physician designated in the certificate and the applicant or his or her parent, guardian, or custodian.

History: En. Sec. 4, Ch. 332, L. 1969; amd. Sec. 35, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "board of eugenics" for "board" in the first sentence of subsection (1); inserted "depart-

ment of institutions" after "shall be sent by" in the second sentence of subsection (2); substituted "department of institutions" for "board" at the end of the second sentence of subsection (2); and made minor changes in phraseology, punctuation and style.

69-6405. Repealed.

Repeal Section 69-6405 (Sec. 5, Ch. 332, L. 1969;

Sec. 36, Ch. 120, L. 1974); relating to lia-

bility for sterilization, was repealed by Sec. 9, Ch. 234, Laws 1977.

69-6406. Certificate that applicant does not possess capacity for voluntary consent to sterilization—person disregarding certificate guilty of misdemeanor and civilly liable—exception. If, upon the hearing, the board of eugenics finds that the applicant does not possess the capacity for voluntary consent to sterilization, as set forth in section 69-6403 and section 69-6404, the board shall make a certificate setting forth that finding. The department of institutions shall send the original to the physician designated by the applicant to perform the medical treatment; one copy shall be sent to the applicant or his or her parent, guardian or custodian, and one copy to remain in the permanent files of the department. After the certificate is filed, it is unlawful, and punishable as a misdemeanor, for any person to perform or assist in the performance of a sterilization of the applicant or to produce or assist directly or indirectly in the procurement of such sterilization on the applicant, and any such person shall be civilly liable for damages for the performance or the procuring directly or indirectly of the performance of eugenical sterilization upon the applicant. However, nothing in this act shall prohibit a physician, at the request of the applicant, his or her parent, guardian or custodian, from performing a sterilization procedure on the applicant for purely medical as distinguished from eugenical reasons.

History: En. Sec. 6, Ch. 332, L. 1969; amd. Sec. 37, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "board of eugenics" for "board" in the first sen-

tence; substituted "department of institutions" for "board" at the beginning, and "department" for "board" at the end of the second sentence; and made minor changes in phraseology and punctuation.

CHAPTER 65—MONTANA ENVIRONMENTAL POLICY ACT

Section

69-6501. **Short title.**

69-6502. **Purpose of act.**

69-6503. **Declaration of state policy for the environment.**

69-6504. **General directions to state agencies.**

69-6505. **Review of statutory authority and administrative policies to determine deficiencies or inconsistencies.**

69-6506. **Specific statutory obligations unimpaired.**

69-6507. **Policies and goals supplementary.**

69-6508. **Environmental quality council.**

- 69-6509. Term of office.
- 69-6510. Meetings.
- 69-6511. Appointment and qualifications of an executive director.
- 69-6512. Appointment of employees.
- 69-6513. Term and removal of the executive director.
- 69-6514. Duties of executive director and staff.
- 69-6515. Examination of records of government agencies.
- 69-6516. Hearings by council—enforcement of subpoenas.
- 69-6517. Consultation with other groups—utilization of services.
- 69-6518. Fee may be imposed.

69-6501. Short title. This act may be cited as the "Montana Environmental Policy Act."

History: En. Sec. 1, Ch. 238, L. 1971.

Title of Act

An act to establish a state policy for

the environment and to establish an environmental quality council and setting forth its powers and duties and providing an effective date.

69-6502. Purpose of act. The purpose of this act is to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the state; and to establish an environmental quality council.

History: En. Sec. 2, Ch. 238, L. 1971.

69-6503. Declaration of state policy for the environment. The legislative assembly, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the state of Montana, in co-operation with the federal government and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Montanans.

(a) In order to carry out the policy set forth in this act, it is the continuing responsibility of the state of Montana to use all practicable means, consistent with other essential considerations of state policy, to improve and co-ordinate state plans, functions, programs, and resources to the end that the state may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Montanans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment

without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our unique heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The legislative assembly recognizes that each person shall be entitled to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

History: En. Sec. 3, Ch. 238, L. 1971.

69-6504. General directions to state agencies. The legislative assembly authorizes and directs that, to the fullest extent possible.

(a) The policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in this act, and

(b) all agencies of the state shall

(1) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) identify and develop methods and procedures, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations;

(3) include in every recommendation or report on proposals for projects, programs, legislation and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies, which are

authorized to develop and enforce environmental standards, shall be made available to the governor, the environmental quality council and to the public, and shall accompany the proposal through the existing agency review processes.

(4) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(5) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national co-operation in anticipating and preventing a decline in the quality of mankind's world environment;

(6) make available to counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(7) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(8) assist the environmental quality council established by section 8 [69-6508] of this act.

History: En. Sec. 4, Ch. 238, L. 1971.

69-6505. Review of statutory authority and administrative policies to determine deficiencies or inconsistencies. All agencies of the state shall review their present statutory authority; administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this act and shall propose to the governor and the environmental quality council not later than July 1, 1972, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this act.

History: En. Sec. 5, Ch. 238, L. 1971.

69-6506. Specific statutory obligations unimpaired. Nothing in section 3 [69-6503] or 4 [69-6504] shall in any way affect the specific statutory obligations of any agency of the state

(a) to comply with criteria or standards of environmental quality,

(b) to co-ordinate or consult with any other state or federal agency,

or

(c) to act, or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

History: En. Sec. 6, Ch. 238, L. 1971.

69-6507. Policies and goals supplementary. The policies and goals set forth in this act are supplementary to those set forth in existing authorizations of all boards, commissions, and agencies of the state.

History: En. Sec. 7, Ch. 238, L. 1971.

69-6508. Environmental quality council. The environmental quality council shall consist of thirteen (13) members to be as follows:

(a) The governor or his designated representative shall be an ex officio member of the council and shall participate in council meetings as a nonvoting member.

(b) Four (4) members of the senate and four (4) members of the house of representatives appointed before the fiftieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the council occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment. No more than two (2) of the appointees of each house shall be members of the same political party.

(c) Four (4) members of the general public; two (2) public members shall be appointed by the speaker of the house with the consent of the house minority leader, and two (2) shall be appointed by the president of the senate with the consent of the senate minority leader.

In considering the appointments of (b) and (c) above, consideration shall be given to their qualifications to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 69-6503 of this act; to be conscious and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 8, Ch. 238, L. 1971; amd. Sec. 1, Ch. 492, L. 1975; amd. Sec. 1, Ch. 204, L. 1977.

Amendments

The 1975 amendment substituted "non-voting member" for "regular member" at the end of subdivision (a); substituted "fiftieth legislative day" for "sixtieth legislative day" in the first sentence of subdivision (b); substituted the first para-

graph of subdivision (c) for "Four (4) members of the general public to be appointed by the governor with the consent of the senate"; and made minor changes in phraseology and style.

The 1977 amendment substituted "same method as the original appointment" for "remaining members of the council" at the end of the second sentence of subdivision (b).

69-6509. Term of office. (1) The terms of office of all council members shall be two (2) years and shall terminate upon appointment of a new council before the fiftieth legislative day. Council members may be reappointed; however, in no case shall a member serve more than six (6) years.

(2) The council shall elect one of its members as chairman and such other officers as it deems necessary. Such officer shall be elected for a term of two (2) years.

History: En. Sec. 9, Ch. 238, L. 1971; amd. Sec. 2, Ch. 492, L. 1975.

Amendments

The 1975 amendment inserted the subsection designations; and rewrote subsection (1), which read: "The four (4) council members from the house of representatives shall serve for two (2) years

and may be reappointed. Two (2) council members from the senate, one from each political party, and two (2) council members from the general public shall serve for four (4) years and these members may be reappointed for a two (2) year term. Two (2) council members from the senate, one from each political party and two (2) council members from the general public

shall serve for two (2) years and these members may be reappointed for a four (4) year term. In no case shall a member of the council serve more than six (6) years."

Effective Date

Section 3 of Ch. 492, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 21, 1975.

69-6510. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 43-310.1. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

History: En. Sec. 10, Ch. 238, L. 1971; amd. Sec. 6, Ch. 103, L. 1977.

Amendments

The 1977 amendment substituted "is entitled to receive compensation and expenses as provided in 43-310.1" for "shall, unless he is a full-time salaried officer or

employee of this state, be paid twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of council duties, and shall also be reimbursed for actual and necessary expenses incurred while in the performance of council duties" in the second sentence.

69-6511. Appointment and qualifications of an executive director. The council shall appoint the executive director and set his salary. The executive director shall hold a degree from an accredited college or university with a major in one of the several environmental sciences and shall have at least three (3) years of responsible experience in the field of environmental management.

He shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 3 [69-6503] of this act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment.

History: En. Sec. 11, Ch. 238, L. 1971.

69-6512. Appointment of employees. The executive director, subject to the approval of the council may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

History: En. Sec. 12, Ch. 238, L. 1971.

69-6513. Term and removal of the executive director. The executive director is solely responsible to the environmental quality council. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The council may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 13, Ch. 238, L. 1971.

69-6514. Duties of executive director and staff. It shall be the duty and function of the executive director and his staff

(a) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in section 3 [69-6503] of this act, and to compile and submit to the governor and the legislative assembly studies relating to such conditions and trends;

(b) to review and appraise the various programs and activities of the state agencies in the light of the policy set forth in section 3 [69-6503] of this act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the governor and the legislative assembly with respect thereto;

(c) to develop and recommend to the governor and the legislative assembly, state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(d) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(e) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(f) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislative assembly requests;

(g) to analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences, and assist in preparation of reports for use by legislative committees, administrative agencies, and the public.

(h) to consult with, and assist legislators who are preparing environmental legislation, to clarify any deficiencies or potential conflicts with an overall ecologic plan.

(i) to review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities, and with a general ecologic perspective, and to suggest legislation to remedy such situations.

(j) to transmit to the governor and the legislative assembly annually, and make available to the general public annually, beginning July 1, 1972, an environmental quality report concerning the state of the environment which shall contain

(1) the status and condition of the major natural, man-made, or altered environmental classes of the state, including, but not limited to, the air, the aquatic, including surface and ground water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban, and rural environment;

(2) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;

(3) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the state and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

History: En. Sec. 14, Ch. 238, L. 1971.

69-6515. Examination of records of government agencies. The environmental quality council shall have the authority to investigate, examine and inspect all records, books and files of any department, agency, commission, board or institution of the state of Montana.

History: En. Sec. 15, Ch. 238, L. 1971.

69-6516. Hearings by council—enforcement of subpoenas. In the discharge of its duties the environmental quality council shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the environmental quality council to compel obedience by proceedings for contempt as the case of disobedience of the requirements of a subpoena issued from such court on a refusal to testify therein.

History: En. Sec. 16, Ch. 238, L. 1971.

69-6517. Consultation with other groups—utilization of services. In exercising its powers, functions, and duties under this act, the council shall

(a) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments and other groups, as it deems advisable; and

(b) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the commission's

activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

History: En. Sec. 17, Ch. 238, L. 1971.

Effective Date

Section 18 of Ch. 238, Laws 1971 pro-

vided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

69-6518. Fee may be imposed. (1) Each agency of state government charged with the responsibility of issuing a lease, permit, contract, license, or certificate under any provision of state law may adopt rules prescribing fees which shall be paid by a person, corporation, partnership, firm, association, or other private entity when an application for a lease, permit, contract, license, or certificate will require an agency to compile an environmental impact statement as prescribed by section 69-6504, R. C. M. 1947, of the Montana Environmental Policy Act. An agency must determine within thirty (30) days after a completed application is filed whether it will be necessary to compile an environmental impact statement and assess a fee as prescribed by this section. The fee assessed under this section shall only be used to gather data and information necessary to compile an environmental impact statement as defined in the Montana Environmental Policy Act. No fee may be assessed if an agency intends only to file a negative declaration stating that the proposed project will not have a significant impact on the human environment.

(2) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate, as specified in subsection (1), an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. No fee may be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of two thousand five hundred dollars (\$2,500) to compile an environmental impact statement. The maximum fee that may be imposed by an agency shall not exceed two per cent (2%) of any estimated cost up to one million dollars (\$1,000,000); plus one per cent (1%) of any estimated cost over one million dollars (\$1,000,000) and up to twenty million dollars (\$20,000,000); plus one-half of one per cent ($\frac{1}{2}$ of 1%) of any estimated cost over twenty million dollars (\$20,000,000) and up to one hundred million dollars (\$100,000,000); plus one-quarter of one per cent ($\frac{1}{4}$ of 1%) of any estimated cost over one hundred million dollars (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-eighth of one per cent ($\frac{1}{8}$ of 1%) of any estimated cost in excess of three hundred million dollars (\$300,000,000). If an application consists of two (2) or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities. The estimated cost shall be determined by the agency and the applicant at the time the application is filed.

(3) No fee as prescribed by this section may be assessed against any person, corporation, partnership, firm, association, or other private entity filing an application for a certificate under the provisions of the Montana Utility Siting Act, Title 70, chapter 8, R. C. M. 1947.

(4) In adopting rules prescribing fees as authorized by this section,

an agency shall comply with the provisions of the Montana Administrative Procedure Act, Title 82, chapter 42, R. C. M. 1947.

(5) All fees collected under this section shall be deposited in the state earmarked revenue fund as provided in section 79-410, R. C. M. 1947. All fees paid pursuant to this section shall be used as herein provided and each agency upon completion of the necessary work will make an accounting to the applicant of the funds expended and refund all unexpended funds without interest.

(6) In cases where a combined facility proposed by an applicant requires action by more than one (1) agency or multiple applications for the same facility, the governor shall designate a lead agency to collect one (1) fee pursuant to this section, to co-ordinate the preparation of information required for all environmental impact statements which may be required, and to allocate and disburse the funds necessary to the other agencies which require funds for the completion of the necessary work.

(7) Each agency shall review and revise its rules imposing fees as authorized by this section at least every two (2) years. Furthermore, each agency shall provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature.

History: En. 69-6518 by Sec. 1, Ch. 329, L. 1975.

adopt rules imposing a fee to be paid by an applicant for a lease, permit, contract, license, or certificate when an agency is required to compile an environmental impact statement.

Title of Act

An act to authorize each state agency to

CHAPTER 66—PASSENGER TRAMWAYS

Section

- 69-6601. Policy of state.
- 69-6602. Definitions.
- 69-6605. Registration of tramways required.
- 69-6606. Application for registration.
- 69-6607. Issuance of certificates.
- 69-6608. Fees.
- 69-6608.1. Assessment on passenger tramways receipts.
- 69-6609. Deposit of fees.
- 69-6610. Additional powers and duties of department.
- 69-6611. Inspection of tramways.
- 69-6612. Order for corrective action and compliance.
- 69-6613. Remedies to enforce compliance.
- 69-6614. Judicial review.
- 69-6615. Tramways not common carriers or public utilities.
- 69-6616. Unlawful to endanger life or cause damage.
- 69-6617. Violation a misdemeanor.

69-6601. Policy of state. In order to safeguard the life, health, property, and welfare of the citizens of Montana while using passenger tramways, as defined in 69-6602, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design, construction, and operation of passenger tramways, but not from the hazards inherent in the sports of mountaineering, skiing, and hiking or from the hazards of the area utilized by the skier or other sportsman and that periodic inspections be required of passenger tramways with a view to

assuring that each one of them meets the rules set forth by the department. The state, through the department, shall register all passenger tramways in the state, establish reasonable standards of design, construction, and operational practices, and cause to be made such inspections as may be necessary in carrying this policy into effect.

History: En. Sec. 1, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 19, Ch. 124, L. 1977.

Title of Act

An act relating to the inspection of passenger tramways; providing for creation of a passenger tramway safety board, term of office, and compensation of board members, powers and duties of the board, passenger tramway registration, registration fees, and judicial review.

Amendments

The 1974 amendment substituted "department" for "Montana state aerial tramway board" at the end of the next to last sentence.

The 1977 amendment substituted "utilized" for "served" before "by the skier or other sportsman" in the first sentence; deleted "and regulations" after "rules" near the end of the first sentence; and made minor changes in phraseology and punctuation.

Duty of Reasonable Care

Under Montana law a passenger tramway or ski lift is not a common carrier, and its operation requires only a duty of reasonable and ordinary care, and is not held to the higher standards of a common carrier. *Pessl v. Bridger Bowl*, — M —, 524 P 2d 1101.

69-6602. Definitions. As used in this act:

- (1) "Department" means the department of administration provided for in Title 82A, chapter 2.
- (2) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.
- (3) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages or directs the operation of a passenger tramway.
- (4) "Area" means the area, terrain or ski slopes served by a passenger tramway.
- (5) "Passenger tramway" means a device used to transport passengers by means of any of the following:
 - (a) Two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;
 - (b) Multi-car aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to, and suspended from, a moving wire rope or attached to a moving wire rope and supported on a standing wire rope, or similar devices;
 - (c) Skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable, or similar devices;
 - (d) Chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain or link belt supported by trestles or towers with one or more spans, or similar devices;

(e) J bar, T bar or platter pull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) Rope tow, a type of transportation which pulls the skiers, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

History: En. Sec. 2, Ch. 436, L. 1971;
amd. Sec. 53, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted the defi-

nition in subsection (1) for a subsection which read "The word 'board' means the passenger tramway safety board created by section 3"; and made minor changes in style and phraseology.

69-6603, 69-6604. Repealed.

Repeal

Sections 69-6603, 69-6604 (Secs. 3, 4,
Ch. 436, L. 1971), relating to the tramway

safety board, were repealed by Sec. 53, Ch.
511, Laws 1973.

69-6605. Registration of tramways required. No passenger tramway shall be operated in this state unless it has been and continues to be registered with the department; provided, however, that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the department; and if an operator files an application for the registration of a passenger tramway with the department which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the department takes final action on the pending application and shall have (a) issued a certificate to the operator, or (b) given written notice to the operator that the passenger tramway has not qualified for certification.

History: En. Sec. 5, Ch. 436, L. 1971;
amd. Sec. 2, Ch. 63, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" throughout the section.

69-6606. Application for registration. On or before October 1, 1971, and each year following on or before October 1, every operator of a passenger tramway shall apply to the department, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the department may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this act as specified in section 1 [69-6601] and the rules and regulations promulgated by the department pursuant to section 10 [69-6610].

History: En. Sec. 6, Ch. 436, L. 1971;
amd. Sec. 2, Ch. 63, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" throughout the section.

69-6607. Issuance of certificates. (1) The department shall issue to the applying operator registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) That the facts stated in the application are sufficient to enable the department to fulfill its duties under this article; and

(b) That each such passenger tramway sought to be registered complies with the rules and regulations of the department promulgated pursuant to section 10 [69-6610].

(2) In order to satisfy itself that the conditions described in paragraphs (a) and (b) of subsection (1) of this section have been fulfilled, the department may cause to be made such inspections described in section 11 [69-6611] as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the department shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this chapter.

(4) Each registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load.

History: En. Sec. 7, Ch. 436, L. 1971;
amd. Sec. 2, Ch. 63, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board" throughout the section.

69-6608. Fees. The application for registration, or supplemental application shall be accompanied by such annual fees as the department may fix from year to year, not to exceed the following annual fees: passenger tramways described in section 2 (5) (e) and (f) [69-6602 (5) (e) and (f)], twenty-five dollars (\$25) each; (c) and (d), fifty dollars (\$50) each; (a) and (b), one hundred dollars (\$100) each.

History: En. Sec. 8, Ch. 436, L. 1971;
amd. Sec. 2, Ch. 63, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board."

69-6608.1. Assessment on passenger tramways receipts. The department of administration is hereby authorized to impose an assessment of $\frac{1}{4}$ of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of \$100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of revenue and remitted to the general fund by December 31 of each year. All proceeds of the gross receipts assessment shall be used only to support the duties of the department set forth in Title 69, chapter 66, R.C.M. 1947.

History: En. 69-6608.1 by Sec. 1, Ch. 437,
L. 1977.

ment on all passenger tramway operators in Montana; amending section 69-6609, R.C.M. 1947; and providing an immediate effective date.

Title of Act

An act to impose a gross receipts assess-

69-6609. Deposit of fees. All fees collected by the department shall be deposited in the general fund. It is the legislature's intent that such fees and assessments generate sufficient revenue for a general fund appropriation for contracted inspection services.

History: En. Sec. 9, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 2, Ch. 437, L. 1977.

passenger tramway safety account"; and added the second sentence.

Amendments

The 1974 amendment substituted "department" for "board."

The 1977 amendment substituted "the general fund" at the end of the first sentence for "an earmarked revenue fund—

Effective Date and Transition Period

Section 3 of Ch. 437, Laws 1977 read "This act is effective upon its passage and approval. Assessments for the period beginning on the effective date of this act and ending July 1, 1977, shall be collected by December 31, 1977."

69-6610. Additional powers and duties of department. In addition to all other powers and duties conferred and imposed upon the department by this chapter, the department shall:

(1) adopt reasonable rules relating to public safety in the design, construction, and operation of passenger tramways but which may not relate or pertain to an area served by a passenger tramway. In adopting such rules the department shall:

(a) use as a guideline the standards contained in "The American National Standards Institute—Safety Requirements for Aerial Passenger Tramways", ANSI B 77.1—1970, as amended from time to time, or equivalent and as amended or supplemented from time to time by the department;

(b) hold hearings and take in all evidence relating to the adoption of these rules.

(2) supply to each operator a copy of its rules and each amendment thereto or revision thereof;

(3) avoid discrimination in application of the rules to operators of passenger tramways;

(4) hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the department, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry;

(5) approve, deny, revoke, and renew the registrations provided for in this chapter;

(6) cause the prosecution and enjoinder of all persons violating the provisions of this chapter and incur the necessary expenses thereof;

(7) employ, within the funds available, and prescribe the duties of such personnel as the department considers necessary.

History: En. Sec. 10, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; amd. Sec. 20, Ch. 124, L. 1977.

Amendments

The 1974 amendment substituted "department" for "board" throughout the section.

The 1977 amendment deleted a subsec-

tion (1) designation at the beginning of the section; redesignated former subdivision (1)(a) as subdivisions (1) through (3); deleted "and regulations" after "rules" throughout the section; redesignated former subdivisions (1)(b) through (1)(d) as subdivisions (4) through (6); deleted a former subdivision (1)(e) reading "To elect officers and adopt a seal

which may be affixed to all registrations issued by the department"; redesignated former subdivision (1)(f) as subdivision (7); deleted "of a secretary" after "duties" in subdivision (7); and made minor changes in phraseology and punctuation.

69-6611. Inspection of tramways. The department may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the department may reasonably require. The department may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the department's rules and regulations exists, or a condition in passenger tramway construction, operation or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the department for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971; **Amendments**
amd. Sec. 2, Ch. 63, L. 1974.

The 1974 amendment substituted "department" for "board" throughout the section.

69-6612. Order for corrective action and compliance. If, after investigation, the department finds that a violation of this chapter or any of its rules or regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered mail at the department's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 436, L. 1971; **Amendments**
amd. Sec. 2, Ch. 63, L. 1974.

The 1974 amendment substituted "department" for "board" throughout the section.

69-6613. Remedies to enforce compliance. If any operator fails to comply with a legal order, rule or regulation of the department, the department, at its election, may

(a) Suspend the registration of the affected passenger tramway until the operator complies therewith; or

(b) Bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located, to compel compliance therewith. In such proceedings the department shall not be required to post bond.

History: En. Sec. 13, Ch. 436, L. 1971; **Amendments**
amd. Sec. 2, Ch. 63, L. 1974.

The 1974 amendment substituted "department" for "board" throughout the section.

69-6614. Judicial review. Any order of the department adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision

of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: En. Sec. 14, Ch. 436, L. 1971;
amd. Sec. 2, Ch. 63, L. 1974.

Amendments

The 1974 amendment substituted "department" for "board."

69-6615. Tramways not common carriers or public utilities. Passenger tramways shall not be construed to be common carriers or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana.

History: En. Sec. 15, Ch. 436, L. 1971;
amd. Sec. 21, Ch. 124, L. 1977.

Amendments

The 1977 amendment substituted "common carriers" for "common carrier."

69-6616. Unlawful to endanger life or cause damage. It shall be unlawful for any person riding or using a passenger tramway to do so in such manner as to endanger the life and safety of other persons or cause damage to passenger tramway equipment.

History: En. Sec. 16, Ch. 436, L. 1971.

69-6617. Violation a misdemeanor. Any person who violates section 16 [69-6616] shall be guilty of a misdemeanor.

History: En. Sec. 17, Ch. 436, L. 1971.

CHAPTER 67—DIAGNOSTIC TESTS FOR PREGNANT WOMEN AND NEWBORN INFANTS

Section

69-6701. Definitions.

69-6702. Prenatal blood sample required for serological test.

69-6703. Approved laboratories to perform test—report of positive results.

69-6704. Certificate form.

69-6705. Exhibit of results of test to patient and spouse—minor patient's parent or guardian.

69-6706. Information confidential—violation as misdemeanor.

69-6707. Administrative expenses.

69-6708. Waiver of test by court when contrary to patient's religious creed.

69-6709. Birth certificate to state whether test made.

69-6710. Definitions.

69-6711. Metabolic test required for newborn infant—approved laboratory.

69-6712. Administration—rules.

69-6713. Boulder river school assistance required.

69-6701. Definitions. (1) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

History: En. Sec. 1, Ch. 228, L. 1973;
amd. Sec. 25, Ch. 187, L. 1977.

Title of Act

An act providing for a standard serological test for women seeking prenatal care; providing for definitions; laboratory test-

ing, certificate form, duties of physicians and other persons required to take sample; disclosure of report, confidentiality of report, report to department of health of positive reports of test, use of information by department, when, report of birth to state if test made; exemption from pro-

visions of act; and repealing sections 69-4612, 69-4613, 69-4614 and 69-4615, R. C. M. 1947.

Amendments

The 1977 amendment added "provided for in Title, 82A, chapter 6" at the end of subsection (1).

69-6702. Prenatal blood sample required for serological test. Every female, regardless of age or marital status, seeking prenatal care from a physician, is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(1) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(2) A person permitted to attend a pregnant woman, but not permitted to take blood samples shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(3) Any physician or other person required to take the blood sample who violates this act is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision, and whose request is refused, is not guilty of a violation of this section.

History: En. Sec. 2, Ch. 228, L. 1973.

69-6703. Approved laboratories to perform test—report of positive results. The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department. Any other state, United States public health service or United States armed forces laboratory shall be approved for the purpose of this act. The laboratory test may be made on request at the laboratory of the department. A reasonable fee for the test may be established by the department.

(1) Reasonable rules for reports to be submitted by any laboratory making tests, and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(2) All positive laboratory tests for any venereal diseases shall be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

(3) The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

History: En. Sec. 3, Ch. 228, L. 1973.

69-6704. Certificate form. The certificate form to be provided the physician recording the results of the test made by the laboratory shall be the same form as that provided with respect to the premarital standard serological test in 48-135.

History: En. Sec. 4, Ch. 228, L. 1973; amd. Sec. 26, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in style and phraseology.

69-6705. Exhibit of results of test to patient and spouse—minor patient's parent or guardian. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or, if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: En. Sec. 5, Ch. 228, L. 1973.

69-6706. Information confidential—violation as misdemeanor. Certificates, laboratory statements or reports, or any other matters in this act referred to, and the information therein contained, shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information, or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports, without authority, to any person not by law entitled to them, is guilty of a misdemeanor and may be fined not more than one hundred dollars (\$100).

History: En. Sec. 6, Ch. 228, L. 1973.

69-6707. Administrative expenses. The department shall provide all necessary printing and pay all necessary expenses relative to administration of the act.

History: En. Sec. 7, Ch. 228, L. 1973.

69-6708. Waiver of test by court when contrary to patient's religious creed. The district court within the county wherein any person affected by this act resides may waive the requirements of this act as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the act are contrary to the tenets or practices of the religious creed of which the applicant is an adherent, and that the public health and welfare will not be injuriously affected thereby.

History: En. Sec. 8, Ch. 228, L. 1973.

69-6709. Birth certificate to state whether test made. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: En. Sec. 9, Ch. 228, L. 1973.

Separability Clause

Section 10 of Ch. 228, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its

applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 11 of Ch. 228, Laws 1973 read "Sections 69-4612, 69-4613, 69-4614 and 69-4615, R. C. M. 1947, are repealed."

69-6710. Definitions. As used in this act:

(1) "Department" means the department of health and environmental sciences.

(2) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

(3) "Newborn" means any infant under twenty-eight (28) days of life.

History: En. Sec. 1, Ch. 227, L. 1973.

Title of Act

An act providing for infant screening; providing the department of health and environmental sciences require tests for newborn infants; providing for administration of the act; regulations; requir-

ing the availability of, and if requested, furnishing of assistance and services of the department of health and environmental sciences and the Boulder river school and hospital if tests are reported positive; and repealing section 69-4116, R. C. M. 1947.

69-6711. Metabolic test required for newborn infant—approved laboratory. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for, or a person responsible for the registration of birth of an infant, shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

History: En. Sec. 2, Ch. 227, L. 1973.

69-6712. Administration—rules. This act shall be administered by the department, and the department may adopt rules for the administration of this act.

History: En. Sec. 3, Ch. 227, L. 1973.

69-6713. Boulder river school assistance required. (1) The department and the staff of the Boulder river school and hospital shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this act.

(2) The department may determine its procedure for advising the attending physician, the parents or legal guardian of the newborn infant of any medical results of the test, and the availability of assistance, services or counseling of the department and the staff of the Boulder river school and hospital. The department may determine procedures for coordination with the Boulder river school and hospital in providing the services and assistance required in this act.

History: En. Sec. 4, Ch. 227, L. 1973.

Separability Clause

Section 5 of Ch. 227, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its ap-

plications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 6 of Ch. 227, Laws 1973 read "Section 69-4116, R. C. M. 1947, is repealed."

CHAPTER 68—MOTOR VEHICLE WRECKING FACILITIES

Section

69-6801. Definitions.

69-6802. Motor vehicle wrecking facility and motor vehicle graveyard license—application—fee—display—term—not transferable.

69-6803. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility.

69-6804. Records required of facilities.

69-6805. County to provide motor vehicle graveyards—consolidation—budget.

69-6806. Crushing and recycling of junk vehicles.

69-6807. Deposit of fees—special junk vehicle assessment fee.

69-6808. Adoption of rules.

69-6809. Denial, suspension or revocation of license—grounds.

69-6810. Injunction to enforce chapter—action to collect civil penalty.

69-6811. Prohibition.

69-6812. Penalties.

69-6801. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Motor vehicle wrecking facility" means a facility buying, selling, or dealing in four or more vehicles per year of a type required to be licensed for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle or a facility which buys or sells integral second-hand parts or component material thereof, in whole or in part, and deals in second-hand motor vehicle parts. A facility which buys or sells integral secondhand parts or component material of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(2) "Motor vehicle graveyard" means a collection point established by a county for junk motor vehicles prior to their disposal.

(3) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled vehicle, including component parts, or a vehicle substantially changed in form by removal of parts or component materials and which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(4) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity whether organized for profit or not.

(5) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(6) "Board" means the board of health and environmental sciences, provided for in 82A-605.

(7) "Shielding" means the construction or use of fencing or man-made or natural barriers to conceal junk vehicles from public view.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen.

History: En. Sec. 1, Ch. 410, L. 1973; amd. Sec. 1, Ch. 251, L. 1977; amd. Sec. 1, Ch. 252, L. 1977.

once by Ch. 251 and once by Ch. 252. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1977,

Title of Act

An act providing for the licensing and regulation of motor vehicle wrecking facilities; controlling junk vehicles in non-wrecking yard locations; the establishment of motor vehicle graveyard facilities, and related matters thereto; amending sections 32-4515 and 32-4516, R. C. M. 1947, to permit the licensing of junkyards by the department of health and environmental sciences; and the establishment of an effective date.

Amendments

Chapter 251, Laws of 1977, inserted the second sentence in subsection (1) relating to integral second-hand parts or component material of a motor vehicle; and made a minor change in phraseology.

Chapter 252, Laws of 1977, inserted "established by a county" in subdivision (2); inserted "including component parts" in subdivision (3); deleted "in either case that remains in public view" before "which is not lawfully and validly licensed" in subdivision (3); deleted "excluding antique vintage and classic vehicles" at the end of subdivision (3); substituted "company, association, corporation, city, town, local governmental entity, or any other governmental or private entity" in subdivision (4) for "association, corporation, or any other entity"; added subdivisions (6) through (8); and made minor changes in phraseology, punctuation and style.

69-6802. Motor vehicle wrecking facility and motor vehicle graveyard license—application—fee—display—term—not transferable. A person may not conduct, maintain, or operate a motor vehicle wrecking facility or motor vehicle graveyard without a license issued by the department.

(1) Application for the license shall be made on forms furnished by the department.

(2) An annual fee of \$50 shall be paid to the department for the license, or quarterly prorated for new facilities.

(3) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of the chapter.

(4) A license shall be displayed in a prominent place in the licensed facility or graveyard.

(5) The license expires on December 31 of the year issued.

(6) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

(7) A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board within 30 days after receipt of official notice of the department's decision.

History: En. Sec. 2, Ch. 410, L. 1973; amd. Sec. 2, Ch. 252, L. 1977.

agraph; inserted subdivision (3); redesignated former subdivisions (3) through (5) as subdivisions (4) through (6); added "or graveyard" to the end of subdivision (4); added subdivision (7); and made a minor change in style.

Amendments

The 1977 amendment inserted "or motor vehicle graveyard" in the preliminary par-

69-6803. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. Possession at a single location of four or more junk vehicles of a type required to be licensed is prima facie evidence that the possessor is operating a motor vehicle wrecking facility.

History: En. Sec. 3, Ch. 410, L. 1973; amd. Sec. 3, Ch. 252, L. 1977.

owns or possesses at a single location four (4) or more junk vehicles of a type required to be licensed is subject to this act even though he is not operating a motor vehicle wrecking facility"; and made minor changes in punctuation and style.

Amendments

The 1977 amendment deleted a former subsection (2) which read "A person who

69-6804. Records required of facilities. (1) Every motor vehicle wrecking facility shall maintain books or files in which is kept a record and description of every junk vehicle obtained by it, together with the name of the person from whom the vehicle was purchased.

(2) This record shall also contain:

(a) the certificate of title or sheriff's certificate of sale, or a written release from the former owner;

(b) the name of the state where the vehicle was last registered;

(c) the number of the last license plate;

(d) the make of the vehicle;

(e) the motor or identification number or serial number;

(f) the date purchased;

(g) the disposition of motor and chassis.

(3) When a motor vehicle wrecking facility submits a junk vehicle to the disposal program, it shall pay a disposal fee of two dollars (\$2) for each vehicle submitted and it shall surrender to the department all records maintained as required in subsections (1) and (2) of this section, and the vehicle is then the property of the state.

History: En. Sec. 4, Ch. 410, L. 1973.

69-6805. County to provide motor vehicle graveyards—consolidation—budget. (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this chapter.

(c) Two (2) or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this act pertaining to a county also apply to a district formed under this subsection.

(d) When there is an accumulation of at least two hundred (200) junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(2) (a) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(b) Prior to June 15, the county shall submit to the department for approval a proposed budget for the succeeding fiscal year.

(c) Any proposed change in the budget or plan must be approved by the department.

(d) The budget shall be for the amounts required by the county for collection costs and acquisition, maintenance, and operation of the graveyard.

History: En. Sec. 5, Ch. 410, L. 1973;
amd. Sec. 2, Ch. 251, L. 1977.

Amendments

The 1977 amendment added "but any

such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this chapter" to subdivision (1)(b).

69-6806. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least 200 vehicles at the facility.

(3) All moneys received from the sale of the junk vehicles or from recycling of the material shall be deposited with the state treasurer to be utilized for the control, collection, recycling, and disposal of junk vehicles and component parts.

(4) An individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle or a written release of the vehicle.

History: En. Sec. 6, Ch. 410, L. 1973; amd. Sec. 1, Ch. 520, L. 1975; amd. Sec. 4, Ch. 252, L. 1977.

Amendments

The 1975 amendment divided subsection (3) into subdivisions; added subdivision (3) (b); and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "recycling" after "collection" in subsection (3);

added "component parts" to the end of subsection (3); deleted former subdivision (3)(b) which read "to conduct a feasibility study to determine the suitability of resource recovery from our solid waste, the cost of which may not exceed two hundred thousand dollars (\$200,000), and the results of which will be made available to the public and legislature by 1977"; and made minor changes in phraseology, punctuation and style.

69-6807. Deposit of fees—special junk vehicle assessment fee. (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for the control, collection, recycling, and disposal of junk vehicles and component parts.

(2) A special junk vehicle disposal fee shall be assessed on each new application for a motor vehicle title and on each transfer of a motor vehicle title in the amount of \$1.50 on passenger cars and trucks under 8,001 pounds GVW. An additional special junk vehicle disposal fee shall be assessed in the amount of 50 cents on each passenger car and truck under 8,001 pounds GVW registered for licensing. The fees shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in 53-122, while owned by a dealer; and

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this chapter and the cost of administration of this chapter to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved junk vehicle collection and graveyard budget of the county. The yearly payment may not exceed \$1 for each motor vehicle under 8001 pounds GVW that is licensed in that county. However, for those counties that have fewer than 5,000 such motor vehicles, the department may pay up to \$5,000, providing the county can justify this payment.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 140 and once by Ch. 252. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 520, Laws of 1975, decreased the junk vehicle disposal fees specified in subsection (2) from \$4.00 and \$1.00 to \$2.00 and 50¢, respectively.

Chapter 140, Laws of 1975, divided part of subsection (1) into subdivisions; added subdivision (1)(b); decreased the fees in subsection (2) from \$4.00 and \$1.00 to \$2.00 and 50¢, respectively; inserted "under 8001 pounds GVW" in the second sentence of subsection (4); added the last sentence to subsection (4); and made minor changes in phraseology, punctuation and style.

Chapter 140, Laws of 1977, deleted a former subdivision (1)(b) reading "to con-

duct a feasibility study to determine the suitability of resource recovery from our solid waste, the cost of which may not exceed two hundred thousand dollars (\$200,000), and the results of which will be made available to the public and legislature by 1977"; deleted "commencing on July 1, 1973" after "disposal fee" near the beginning of subsection (2); deleted "which shall be collected by the county treasurer, and commencing with the year 1974" after "8001 pounds GVW" at the end of the first sentence in subsection (2); inserted "junk vehicle collection and graveyard" near the end of the first sentence in subsection (4); and made minor changes in phraseology, punctuation and style.

Chapter 252, Laws of 1977, inserted "recycling" in subsection (1); added "component parts" to subsection (1); deleted subdivision (1)(b) quoted in the Chapter 140 amendment note; deleted "commencing on July 1, 1973" after "disposal fee" near the beginning of subsection (2); decreased the first fee mentioned in subsection (2) from \$2.00 to \$1.50; and made minor changes in phraseology, punctuation and style.

69-6808. Adoption of rules. The department shall adopt rules necessary for the administration of this chapter, including but not limited to rules pertaining to:

(1) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(2) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(3) the inspection and evaluation of premises and records subject to or required by this chapter;

(4) the development of budget and fiscal forms and procedures for counties;

(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this chapter; and

(6) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule which requires the construction of a fence or man-made barrier which would be in excess of 12 feet in height. A new motor vehicle wrecking facility or graveyard site may not be approved for use or licensed if the proposed facility cannot be shielded from public view. The prohibition concerning approval of a new motor vehicle wrecking facility site does not apply to a facility site that has been used as such within the preceding 18 months.

History: En. Sec. 8, Ch. 410, L. 1973; amd. Sec. 6, Ch. 252, L. 1977.

Amendments

The 1977 amendment inserted "establishment" near the beginning of subdivision

(1); substituted "facilities and graveyards" for "yards" at the end of subdivisions (1) and (2); added subdivision (6); and made minor changes in phraseology and punctuation.

69-6809. Denial, suspension or revocation of license—grounds. The department may deny, suspend, or revoke a motor vehicle wrecking facility's license when it proves the business:

(1) sold or otherwise disposed of a motor vehicle, trailer, or any part thereof when it knew the vehicle or part was stolen or was appropriated without the consent of the owner;

(2) committed forgery on a certificate of title covering a vehicle that has been re-assembled from parts obtained from the disassembling of other vehicles;

(3) committed any illegal act or omission which has caused loss as the result of a sale of a motor vehicle, trailer, or part thereof;

(4) failed to comply with this act or with a rule of the department;

(5) obtained a license fraudulently.

History: En. Sec. 9, Ch. 410, L. 1973.

69-6810. Injunction to enforce chapter—action to collect civil penalty.

(1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation or maintenance of a motor vehicle wrecking facility or graveyard either permanently or until compliance with this chapter, the rules of the department, or an order issued pursuant to this chapter has been demonstrated.

(2) The department, through the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located, may sue in district court to collect a civil penalty as provided in 69-6812.

History: En. Sec. 10, Ch. 410, L. 1973; amd. Sec. 7, Ch. 252, L. 1977.

Amendments

The 1977 amendment substituted "a motor vehicle wrecking facility or graveyard" for "an unlicensed motor vehicle wrecking facility" in subsection (1); inserted "or an order issued pursuant to this chapter" in subsection (1); deleted "to the satisfaction of the department" at the end of subsection (1); substituted sub-

section (2) for "Violation of this act or a rule of the department adopted under this act is a misdemeanor"; and made minor changes in phraseology and punctuation.

Separability Clause

Section 11 of Ch. 410, Laws 1973 read "If any section, subsection, sentence, clause, or provision of the act is held invalid, the remainder of the act is not affected."

69-6811. Prohibition. It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between high-water channel banks of any stream or to reinforce banks of a stream with such junked motor vehicle or the body portion of such junked motor vehicles.

History: En. 69-6811 by Sec. 1, Ch. 112, L. 1975; amd. Sec. 19, Ch. 140, L. 1977.

Title of Act

An act to make unlawful the use of junked motor vehicles for flood control of a stream or for reinforcement of the banks of a stream.

Amendments

The 1977 amendment added "with such junked motor vehicle or the body portion of such junked motor vehicles" to the end of the section; and made minor changes in punctuation.

Repealing Clause

Section 20 of Ch. 140, Laws 1977 read "Section 26-339, R.C.M. 1947 is repealed."

69-6812. Penalties. (1) A person who willfully violates this chapter is guilty of a misdemeanor and upon conviction shall be fined not to exceed \$250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this chapter, a rule of the department, or an order issued as provided in this chapter shall be subject to a civil penalty of not more than \$50. Each day upon which a violation of this chapter or a rule or order occurs is a separate violation.

History: En. 69-6812 by Sec. 2, Ch. 112, L. 1975; amd. Sec. 8, Ch. 252, L. 1977.

Amendments

The 1977 amendment inserted "willfully"

after "A person who" at the beginning of subsection (1); added subsection (2); and made minor changes in phraseology and style.

CHAPTER 69—ABORTION COUNSELORS AND COUNSELING SERVICES

(Repealed—Section 1, Chapter 42, Laws of 1977)

69-6901 to 69-6908. Repealed.

Repeal

Sections 69-6901 to 69-6908 (Secs. 1 to 8, Ch. 266, L. 1974), relating to abortion

counselors and counseling services, were repealed by Sec. 1, Ch. 42, Laws 1977.

CHAPTER 70—EMERGENCY MEDICAL SERVICES PROGRAM

Section

- 69-7001. Declaration of policy and purpose.
- 69-7002. Emergency medical services program—duties of department.
- 69-7003. Findings and purpose.
- 69-7004. Definitions.
- 69-7005. Acts allowed—basic.
- 69-7006. Acts allowed—advanced.
- 69-7007. Additional acts by order.
- 69-7008. Rules.
- 69-7009. Consent.
- 69-7010. Construction of act.

69-7001. Declaration of policy and purpose. The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who

die unnecessarily because necessary life support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

History: En. 69-7001 by Sec. 1, Ch. 311, L. 1974.

of an emergency medical services program by the department of health and environmental sciences.

Title of Act

An act providing for the administration

69-7002. Emergency medical services program—duties of department.

The department of health and environmental sciences shall establish and administer an emergency medical services program. The department is authorized to confer and co-operate with any and all other persons, organizations and governmental agencies that have an interest in emergency medical services problems and needs, and the department is authorized to accept, receive, expend and administer any and all funds which are now available or which may be donated, granted or appropriated to the department of health and environmental sciences. The department of health and environmental sciences and the department of community affairs, highway safety division and other interested departments or divisions, shall develop in writing a mutually agreeable plan of co-operation, so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975.

partment of community affairs" for "department of intergovernmental relations" in the last sentence.

Amendments

The 1975 amendment substituted "de-

69-7003. Findings and purpose. The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

History: En. 69-7003 by Sec. 1, Ch. 84, L. 1975.

emergency medical technicians; providing for the acts of care they may perform; and providing for the adoption of rules by the board of medical examiners.

Title of Act

An act providing for the certification of

69-7004. Definitions. As used in this act:

(1) "Emergency medical technician—basic" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by said board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

(2) "Emergency medical technician—advanced" means personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services who have been specially trained in an advanced emergency medical technician training program approved by the state board of medical examiners and certified by the board as having demonstrated an advanced level of competence suitable to treat victims of severe injury or other serious emergent condition.

(3) "Board" means the board of medical examiners, department of professional and occupational licensing.

History: En. 69-7004 by Sec. 2, Ch. 84,
L. 1975.

69-7005. Acts allowed—basic. An emergency medical technician—basic may perform any of the following:

- (1) Render emergency care, rescue, and resuscitation services;
- (2) Provide emergency transportation;
- (3) Perform cardiopulmonary resuscitation in the pulseless, nonbreathing patient; and
- (4) Such other acts as the board may allow by rule.

History: En. 69-7005 by Sec. 3, Ch. 84,
L. 1975.

69-7006. Acts allowed—advanced. An emergency medical technician—advanced may perform any of the following:

- (1) Render emergency care, rescue, and resuscitation services;
- (2) While caring for patients during training at a hospital, ambulance, or other medical facility, administer parenteral medications under the direct supervision of a physician or a registered nurse;
- (3) Perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient; and
- (4) Such other acts as the board may allow by rule.

History: En. 69-7006 by Sec. 4, Ch. 84,
L. 1975.

69-7007. Additional acts by order. When an emergency medical technician—advanced has voice contact with a physician and upon the physician's order, or is functioning under formally adopted written standing orders of a local hospital medical staff, the following acts may be performed based upon such direct or indirect order:

- (1) Administer intravenous saline or glucose solutions;
- (2) Perform gastric or tracheal suction by intubation;
- (3) Administer parenteral injections of drugs approved by the board; and
- (4) Such other acts as the board may allow by rule.

History: En. 69-7007 by Sec. 5, Ch. 84,
L. 1975.

69-7008. Rules. The board, after consultation with the department of health and environmental sciences, the department of intergovernmental relations, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this act, including, but not limited to, training and certification of personnel, administration of drugs, and other acts as allowed herein.

History: En. 69-7008 by Sec. 6, Ch. 84,
L. 1975.

69-7009. Consent. No emergency medical technician may be subject to civil liability for failure to obtain consent in performing acts as authorized herein to any individual regardless of age where the patient is unable to give consent and there is no other person present legally authorized to consent; provided, that such acts are in good faith and without knowledge of facts negating consent.

History: En. 69-7009 by Sec. 7, Ch. 84,
L. 1975.

69-7010. Construction of act. Nothing in this act shall be construed to detract from the powers granted to the department of health and environmental sciences to regulate ambulance service as provided for in Title 69, chapter 36, R. C. M. 1947.

History: En. 69-7010 by Sec. 8, Ch. 84,
L. 1975.

CHAPTER 71—CONSUMER PRODUCT SAFETY ACT

Section

- 69-7101. Short title.
- 69-7102. Definitions.
- 69-7103. Declaration of hazardous substance—labeling requirements—court proceedings.
- 69-7104. Prohibited acts.
- 69-7105. Penalty—exceptions.
- 69-7106. Additional remedies.
- 69-7107. Detainer of misbranded or banned hazardous substance.
- 69-7108. Duties of department and county attorney.
- 69-7109. Department authorized to adopt rules.
- 69-7110. Powers and duties of department's agents.
- 69-7111. Carriers required to permit inspection.
- 69-7112. Department to develop accident prevention and health oriented education programs.
- 69-7113. Publication of information by department.

69-7101. Short title. This act shall be cited as the "Montana Consumer Product Safety Act of 1975."

History: En. 69-7101 by Sec. 1, Ch. 394,
L. 1975.

Title of Act

An act to regulate the intrastate distribution and sale of hazardous substances

intended or suitable for use by the general public; to investigate and evaluate general use hazardous substances and resulting accidents as they relate to public health; and providing for an effective date.

69-7102. Definitions. In this act the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(2) "Person" includes an individual, partnership, corporation, or association or his legal representative or agent.

(3) "Commerce" means all commerce within this state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(4) (a) "Hazardous substance" means:

(i) a substance or mixture of substances which:

(A) is toxic;

(B) is corrosive;

(C) is an irritant;

(D) is a strong sensitizer;

(E) is flammable or combustible; or

(F) generates pressure through decomposition, heat, or other means if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(ii) substances which the department by rule finds under 69-7103(1) meet the requirements of subsection (4)(a)(i) of this section;

(iii) a radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this act in order to protect the public health; or

(iv) a toy or other article intended for use by children which presents an electrical, mechanical, or thermal hazard, as determined by the department by rule in accordance with 69-7103(5).

(b) The term "hazardous substance" does not apply to pesticides subject to the federal Pesticide Environmental Control Act or the Montana Pesticides Act, to foods, drugs, and cosmetics subject to the Montana Food, Drug, and Cosmetic Act, or to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house. The term applies, however, to an article which is not itself a pesticide within the meaning of the federal Pesticide Environmental Control Act or the Montana Pesticide Act but which is a hazardous substance within the meaning of subsection (4)(a) of this section by reason of bearing or containing a pesticide. The term also applies to pesticides whenever human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(c) The term "hazardous substance" does not include source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

(5) "Toxic" means a substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(6) (a) "Highly toxic" means a substance which falls within any of the following categories:

(i) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(ii) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by man when the substance is used in a reasonably foreseeable manner; or

(iii) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(b) If the department finds that available data on human experience with a substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(7) "Corrosive" means a substance which in contact with living tissue will cause destruction of tissue by chemical action but does not refer to action on inanimate surfaces.

(8) "Irritant" means a substance not corrosive within the meaning of subsection (7) of this section which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(9) "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

(10) (a) "Extremely flammable" applies to a substance which has a flash point at or below 20 degrees F, as determined by the tagliabue open cup tester.

(b) "Flammable" applies to a substance which has a flash point above 20 degrees to and including 80 degrees F, as determined by the tagliabue open cup tester.

(c) "Combustible" applies to a substance which has a flash point above 80 degrees to and including 150 degrees F, as determined by the tagliabue open cup tester.

(d) The flammability or combustibility of solids and the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to the materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with the methods used.

(11) "Radioactive substance" means a substance which emits ionizing radiation.

(12) "Label" means a display of written, printed, or graphic matter upon the immediate container ("immediate container" does not include package liners) of a substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto. A requirement made by or under authority of this act that a word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears:

(a) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper; and

(b) on all accompanying literature where there are directions for use, written or otherwise.

(13) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted) intended or packaged in a form suitable for use by the public or by children which, except as otherwise provided under 69-7103(2) or (3), fails to bear a label:

(a) which states conspicuously:

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there is not a common or usual name) of the hazardous substance or each component which contributes substantially to its hazard unless the department by rule permits or requires the use of a recognized generic name;

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as:

(A) "flammable";

(B) "combustible";

(C) "vapor harmful";

(D) "causes burns";

(E) "absorbed through skin"; or

(F) similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under 69-7103 (2) or (3);

(vii) instruction, when necessary or appropriate, for first-aid treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by subsection (6) of this section; and

(ix) instructions for handling and storage of packages which require special care in handling or storage such as:

(A) "keep out of the reach of children" or its practical equivalent; or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(b) on which a statement required under subsection (13)(a) of this section is located prominently and is in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(14) (a) "Banned hazardous substance" means:

(i) a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(ii) a hazardous substance intended or packaged in a form suitable for use by the general public which the department by rule classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this act for that substance, the degree or nature of the hazard involved in the presence or use of the substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce.

(b) The department by rule shall exempt from subsection (14)(a)(i) of this section articles such as chemical sets which, by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed the directions and warnings.

(c) Proceedings for the issuance, amendment, or repeal of rules under subsections (14)(a)(ii) and (14)(b) of this section shall be governed by the provisions of subsections (4) and (5) of 69-7103.

(15) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(16) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(a) from fracture, fragmentation, or disassembly of the article;

(b) from propulsion of the article (or a part or accessory thereof);

- (c) from points or other protrusions, surfaces, edges, openings, or closures;
- (d) from moving parts;
- (e) from lack or insufficiency of controls to reduce or stop motion;
- (f) as a result of self-adhering characteristics of the article;
- (g) because the article (or a part or accessory thereof) may be aspirated or ingested;
- (h) because of instability; or
- (i) because of any other aspect of the article's design or manufacture.

(17) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

(18) "Court" means, in 69-7103(5), the district court for the first judicial district and, in 69-7106 and 69-7107, the district court in the district where the violation occurs.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977.

Amendments

The 1977 amendment added "provided for in Title 82A, chapter 6" to subdivision

(1); combined subdivisions (12) and (13); redesignated former subdivisions (14) through (19) as subdivisions (13) through (18); changed internal references throughout the section; and made minor changes in phraseology, punctuation and style.

69-7103. Declaration of hazardous substance—labeling requirements—court proceedings. (1) When in the judgment of the department such action will promote the objectives of this act by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance a substance or mixture of substances which the department finds meets the requirements of subsection (4)(a)(i) of 69-7102.

(2) If the department finds that the requirements of 69-7102(13)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by a hazardous substance, the department may by rule establish such reasonable variations or additional labeling requirements as are necessary for the protection of the public health and safety, and a hazardous substance intended or packaged in a form suitable for use by the general public or by children which fails to bear a label in accordance with the rules is a misbranded hazardous substance.

(3) If the department finds that because of the size of the package involved or because of the minor hazard presented by the substance contained therein or for other good and sufficient reasons full compliance with the labeling requirements otherwise applicable under this act is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting the substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

(4) If the department finds that the hazard of an article subject to this act is such that labeling adequate to protect the public health and

safety cannot be devised or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

(5) (a) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this act.

(b) If, before or during a proceeding under subsection (5)(a) of this section, the department finds that because of an electrical, mechanical, or thermal hazard distribution of a toy or other article involved presents an imminent hazard to the public health and the department gives notice of the finding, the toy or other article is a banned hazardous substance for purposes of this act until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(c) (i) In the case of a toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, a person who will be adversely affected by the determination may, at any time before the 60th day after the rule making the determination is issued by the department, file a petition with the court for a judicial review of the determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(ii) If the petitioner applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was no opportunity to adduce the evidence in the proceeding before the department, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in another manner and upon other terms and conditions as the court considers proper. The department may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file the modified or new findings and its recommendation, if any, for the modification or setting aside of its original determination with the return of the additional evidence.

(iii) Upon the filing of the petition under subsection (5)(c) of this section, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under subsection (5)(c)(ii) of this section, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under subsections (5)(c)(i) and (5)(c)(ii) of this section, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to a determination reviewed under subsection (5)(c) of this section, the court may grant appropriate relief pending conclusion of the review proceedings.

History: En. 69-7103 by Sec. 3, Ch. 394,
L. 1975; amd. Sec. 28, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in style, punctuation and phraseology.

69-7104. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) The introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance.

(2) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce, or while the substance is held for sale (whether or not the first sale) after shipment in commerce, and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(3) The receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(4) The giving of a guarantee or undertaking referred to in section 69-7105 (2) (a) which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(5) The failure to permit entry or inspection as authorized by section 69-7110 (1) or to permit access to any copying of any record as authorized by section 69-7111.

(6) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food," "drug," and "cosmetic" shall have the same meanings as in the Montana Food, Drug and Cosmetic Act.

(7) The use by any person to his own advantage, or revealing other than to the department or officers or employees of the agency, or to the courts when relevant in any judicial proceeding under this act, of any information acquired under authority of section 69-7110 concerning any method of process which as a trade secret is entitled to protection.

History: En. 69-7104 by Sec. 4, Ch. 394,
L. 1975.

69-7105. Penalty—exceptions. (1) A person who violates the provisions of 69-7104 is guilty of a misdemeanor and shall be fined no more than \$500 or be imprisoned for any term not to exceed 90 days, or both. For offenses committed with intent to defraud or mislead or for second and subsequent offenses, the penalty shall be imprisonment for any term not to exceed 1 year or a fine of no more than \$3,000, or both.

(2) No person is subject to the penalties of subsection (1) of this section:

(a) for having violated 69-7104(3) if the receipt, delivery, or proffered

delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to him; or

(b) for having violated 69-7104(1) if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this act.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in style, punctuation and phraseology.

69-7106. Additional remedies. In addition to the remedies hereinafter provided, the department is authorized to apply to court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 69-7104, irrespective of whether or not there exists an adequate remedy at law.

History: En. 69-7106 by Sec. 6, Ch. 394, L. 1975.

69-7107. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this act, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, he shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of the agent, and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or his agent. If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and

expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling under the supervision of an agent of the department. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this act and that the expenses of the supervision have been paid.

History: En. 69-7107 by Sec. 7, Ch. 394, L. 1975; amd. Sec. 30, Ch. 187, L. 1977.

Amendments

The 1977 amendment substituted "city, justice's, or district court" for "police,

county or circuit court" in the first sentence of subsection (2); substituted "an order" for "a libel" near the end of the first sentence of subsection (2); and made minor changes in style, punctuation and phraseology.

69-7108. Duties of department and county attorney. It is the duty of the department or the county attorney to whom the department reports a violation of this act to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before a violation of this act is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977.

Amendments

The 1977 amendment inserted "and

either in person" near the end of the section; and made minor changes in punctuation and phraseology.

69-7109. Department authorized to adopt rules. (1) The authority to adopt rules for the efficient enforcement of this act is vested in the department.

(2) The department has the authority to adopt by reference without public hearing rules adopted under the Federal Hazardous Substances Act as amended.

History: En. 69-7109 by Sec. 9, Ch. 394, L. 1975.

69-7110. Powers and duties of department's agents. (1) For enforcement of this act, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

(a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all

pertinent equipment, finished and unfinished materials, and labeling therein; and

(d) obtain samples of materials or packages or labeling thereof.

(2) If the officer or employee obtains a sample, prior to leaving the premises he shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained.

(3) The department shall conduct investigations of reported accidental injuries, illnesses, and deaths resulting from the use or misuse of all hazardous substances, as defined by 69-7102(4)(a)(i), intended or suitable for use by the general public. Investigations shall evaluate the causative hazardous substance and circumstances of the accident for enforcement of this act. If the offending hazardous substance is a pesticide regulated by another agency under the federal Environmental Pesticide Control Act or the Montana Pesticides Act, the investigation shall yield recommendations to the appropriate regulating agency for appropriate action.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in style, punctuation and phraseology.

69-7111. Carriers required to permit inspection. For the purpose of enforcing the provisions of this act, carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates; provided, that evidence obtained under this section is not used in a criminal prosecution of the person from whom obtained; provided further, that carriers are not subject to the other provisions of this act by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

History: En. 69-7111 by Sec. 11, Ch. 394, L. 1975.

69-7112. Department to develop accident prevention and health oriented education programs. The department in co-operation with other state and federal agencies shall develop and conduct appropriate accident prevention and health oriented educational programs. The educational programs shall inform the public of the hazards, proper handling and use, disposal, storage and transportation of hazardous substances and the proper medical and first aid procedures for accidents resulting from hazardous substances.

History: En. 69-7112 by Sec. 12, Ch. 394, L. 1975.

69-7113. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing any judgments, research findings, decrees, or court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health. Nothing in this section shall be construed to prohibit the department from collecting, reporting and illustrating the results of the investigations of the department.

History: En. 69-7113 by Sec. 13, Ch. 394, L. 1975.

Separability Clause

Section 14 of Ch. 394, Laws 1975 read "If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby."

Effective Date

Section 15 of Ch. 394, Laws 1975 read "This act shall take effect upon its passage and approval, but no penalty or condemnation shall be enforced for any violation

of this act which occurs: (1) prior to the expiration of the sixth calendar month after the month in which this act is enacted, or

"(2) prior to the expiration of such additional period or periods, ending not more than eighteen (18) months after the month of enactment of this act, as the department may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods; provided, that the department may limit the application of such additional period or periods to violations related to specified provisions of this act, or to specified kinds of hazardous substances or packages thereof." Approved April 12, 1975.

CHAPTER 72—DEFINITION OF DEATH

Section

69-7201. Definition of death.

69-7201. Definition of death. A human body with irreversible cessation of total brain function, as determined according to usual and customary standards of medical practice, is dead for all legal purposes.

History: En. 69-7201 by Sec. 1, Ch. 228, L. 1977.

Title of Act

An act to provide for a definition of death.

CHAPTER 73—HOME HEALTH AGENCIES

Section

- 69-7301. Definitions.
- 69-7302. License required—duration—transfer prohibited—display.
- 69-7303. Certificate of need.
- 69-7304. Application for license.
- 69-7305. Issuance and renewal of licenses.
- 69-7306. License fees.
- 69-7307. Denial, suspension, or revocation of license.
- 69-7308. Standards for licensure.
- 69-7309. Rulemaking authorized.
- 69-7310. Penalties.

69-7301. Definitions. As used in this act, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(2) "Home health agency" means a public or private agency, organization, facility, or subdivision thereof which is engaged in providing home health services to individuals and families where they are presently residing or in ambulatory care settings, for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

(3) "Home health services" means a broad range of health and social services furnished to individuals and families by a home health agency, or by others under arrangements with the agency, in the place where they are presently residing or in ambulatory care settings. Services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(4) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(5) "Skilled nursing services" means the services of a licensed registered nurse or nurses.

(6) "Supportive services" means services which include but are not limited to the use of medical appliances; medical supplies, other than drugs and biologicals prescribed by a physician; and the collection of blood and other samples for laboratory analysis.

(7) "Therapeutic services" means services which include:

- (a) physical, occupational, or speech therapy;
- (b) medical social services;
- (c) home health-aid services;
- (d) nutritional guidance; or
- (e) homemaker services.

History: En. 69-7301 by Sec. 1, Ch. 383, Title of Act
L. 1977.

An act providing for the licensing and regulation of home health agencies in Montana by the department of health and environmental sciences.

69-7302. License required—duration—transfer prohibited—display.

(1) A person may not conduct, maintain, or operate a home health agency without a license issued by the department.

(2) The license shall expire 1 year following its date of issue. Renewal may be obtained annually.

(3) A license is valid only for the home health agency and premises for which it was issued. A license may not be sold, assigned, or transferred.

(4) Upon discontinuance of the operation or of transfer of ownership of an agency, the license must be returned to the department.

(5) The license shall be displayed in a conspicuous place inside the home health agency office.

History: En. 69-7302 by Sec. 2, Ch. 383,
L. 1977.

69-7303. Certificate of need. (1) A new agency must be awarded a certificate of need from the department prior to applying for a license.

(2) An existing agency must be awarded a certificate of need from the department prior to an expansion of geographic area of service or the addition of a new service.

(3) No certificate of need may be issued unless an agency:

(a) is necessary to provide required health care in the area to be served;

(b) can be economically accomplished and maintained; and

(c) will contribute to the orderly development of adequate and effective health services.

(4) In making the determination to issue the certificate of need based on the determinations enumerated in subsection (3) the following shall be considered:

(a) the compatibility with needs shown in the appropriate state plan; and such other criteria and standards established by the department;

(b) the availability of services which may serve as alternates or substitutes;

(c) the need for special equipment and services in the area;

(d) the possible economics and improvement in services to be anticipated;

(e) the adequacy of financial resources and sources of future revenues; and

(f) the availability of sufficient manpower in professional disciplines.

(5) An application for a certificate of need must be submitted to the department in a form together with information as the department may prescribe. The application must include:

(a) a narrative description of the proposed project;

(b) the number and type of services to be provided;

(c) the estimated cost;

(d) the source of financing; and

(e) the expected time for completion of the proposed project.

(6) Within 7 days after receipt of the application for certificate of need by the department, the department shall send notice to every licensed home health agency within the state of Montana located within 100 miles of the applicant.

(7) The department shall notify the applicant, in writing, of approval or disapproval of the proposal within 90 days after the application is submitted to the department, otherwise the application automatically is approved and the certificate of need granted.

(8) A certificate of need is valid for 1 year from the date of issue, but may be extended by the department for a period of 6 months.

(9) If the department disapproves an application, the department must notify the applicant of its actions and afford the applicant an opportunity to request a hearing before the board of health and environ-

mental sciences. The applicant must notify the department to request a hearing within 15 days after receipt of the notice of disapproval. If the decision, after hearing, is adverse, the applicant may appeal to the district court as provided in 82-4216.

History: En. 69-7303 by Sec. 3, Ch. 383,
L. 1977.

69-7304. Application for license. Application for the license shall be made in the manner as prescribed by the department.

History: En. 69-7304 by Sec. 4, Ch. 383,
L. 1977.

69-7305. Issuance and renewal of licenses. On receipt of a new or renewal application, the department or its authorized agent shall inspect the agency. If minimum standards, described in 69-7308 are met, the department shall issue a license for 1 year.

History: En. 69-7305 by Sec. 5, Ch. 383,
L. 1977.

69-7306. License fees. An annual fee of \$20 shall be paid to the department for the license, and the fee shall be deposited in the state general fund.

History: En. 69-7306 by Sec. 6, Ch. 383,
L. 1977.

69-7307. Denial, suspension, or revocation of license. The department may deny, suspend, or revoke a license for noncompliance with this act or rules adopted by the department.

History: En. 69-7307 by Sec. 7, Ch. 383,
L. 1977.

69-7308. Standards for licensure. (1) The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in P.L. 89-97, section 1861(m), which authorizes the conditions of participation for home health agencies under Title XVIII of the Social Security Act.

(2) All phases of an agency's operation shall be without discrimination against individuals or groups of individuals on the basis of race, creed, color, national origin, sex, age.

History: En. 69-7308 by Sec. 8, Ch. 383,
L. 1977.

69-7309. Rulemaking authorized. The department may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this act in accordance with the Montana Administrative Procedure Act.

History: En. 69-7309 by Sec. 9, Ch. 383,
L. 1977.

69-7310. Penalties. (1) A person who violates this act is subject to the penalties provided for in 69-5221.

(2) The department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a home health agency which is in violation of this act or the rules promulgated pursuant to this act.

(3) A person who establishes a new home health agency, or expands the geographic service area or adds a new service to an existing home health agency, without a certificate of need issued by the department, is guilty of a misdemeanor and shall be fined not less than \$1,000 or more than \$10,000, the fine to be deposited in the state general fund.

History: En. 69-7310 by Sec. 10, Ch. 383, L. 1977.

Separability Clause

Section 11 of Ch. 383, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applica-

tions, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 12 of Ch. 383, Laws 1977 provided the act should be effective upon its passage and approval. Approved April 15, 1977.

CHAPTER 74—ASBESTOS INSULATION

Section

69-7401. Purpose.

69-7402. Definitions.

69-7403. Standards to follow while demolition is underway.

69-7404. Use of asbestos-containing spray products prohibited.

69-7405. Use of fibrated product or compound—supervisory personnel required.

69-7406. Rulemaking authority.

69-7407. Violations—penalties.

69-7401. Purpose. The purpose of this act is to protect the citizens of Montana from the dangers precipitated by the use of spray materials containing mineral fibers. The legislature finds that if adequate safety precautions are not taken during the spray application of these materials, spraying operations may release a significant quantity of particulate matter into the ambient air. Likewise, the legislature finds the continued unregulated use of sprayed asbestos insulation and the destruction of structures containing asbestos insulation represent a significant threat to the health of workers placed in contact with these fibers and to the health of the community as a whole.

History: En. 69-7401 by Sec. 1, Ch. 570, L. 1977.

Title of Act

An act prohibiting the use of asbestos-containing spray materials in construc-

tion; providing procedures for the demolition of buildings or structures containing asbestos insulation or fireproofing; providing procedure for use of other fibrated product or compound; and providing penalties.

69-7402. Definitions. As used in this act, the following definitions apply:

(1) "Department" means the department of administration.

(2) "Fibrated product" means a substance used in construction, for whatever purpose, which contains asbestos fibers, which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity.

History: En. 69-7402 by Sec. 2, Ch. 570,
L. 1977.

69-7403. Standards to follow while demolition is underway. The building or structure to be demolished which contains asbestos insulation or fireproofing must follow the following safeguards:

(a) Whenever possible, the local fire department shall be notified of the demolition.

(b) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(c) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(d) When demolition by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(e) Adequate wetting to suppress dust must be performed before and during the demolition or toppling.

(f) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets with the chutes or buckets sufficiently wetted to prevent dust.

(g) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(h) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

History: En. 69-7403 by Sec. 3, Ch. 570,
L. 1977.

69-7404. Use of asbestos-containing spray products prohibited. The use of asbestos-containing spray products, for whatever purpose, in the construction of a building or structure is prohibited.

History: En. 69-7404 by Sec. 4, Ch. 570,
L. 1977.

69-7405. Use of fibrated product or compound—supervisory personnel required. Whenever a fibrated product or compound is applied to a surface utilizing a spray or pneumatic means of application, one person must be assigned supervisory authority for all aspects of the operation.

History: En. 69-7405 by Sec. 5, Ch. 570,
L. 1977.

69-7406. Rulemaking authority. The department is granted authority to promulgate rules necessary to accomplish the purposes of this act.

History: En. 69-7406 by Sec. 6, Ch. 570,
L. 1977.

69-7407. Violations—penalties. (1) A person who violates any provision of this act commits a misdemeanor.

(2) A person convicted of violating this act shall be fined no more than \$1,000 or be imprisoned in the county jail for a term not to exceed 60 days, or both.

(3) Each separate occurrence in violation of this act is a separate offense.

History: En. 69-7407 by Sec. 7, Ch. 570,
L. 1977.

REVISED CODES OF MONTANA

VOLUME 4

Part 2

1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
SECOND REPLACEMENT VOLUME 4 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING SECOND REPLACEMENT
VOLUME 4 (PART 2) THROUGH VOLUME 557
PACIFIC REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



Copyright © 1973, 1974, 1976 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

Copyright © 1977 by

THE ALLEN SMITH COMPANY

Indianapolis, Indiana

NEW LAWS IN VOLUME 4 (Part 2)

For Index See Supplement to Replacement Volume 9

ENACTED IN 1973

- Consumer counsel for public service commission, 70-701 to 70-709.
- Developmentally disabled persons,
 - Community homes, 71-2001 to 71-2007.
 - Protective services, 71-1901 to 71-1913.
- Hard-to-place children, program to encourage adoption, 71-1801 to 71-1805.
- Public assistance,
 - Investigations by department of revenue, 71-233.1 to 71-233.5.
 - Liens on real property of recipients released, 71-246.1.
- Railroad employees, continued employment after closure of station, 72-169.
- Schools and school districts,
 - Construction plans, review co-ordinated by department of administration, 75-8206.1.
 - Contracts, division to avoid bidding requirements, 75-6808.1.
 - Expenditure of district moneys, documentation, 75-6809.1.
 - Fire drills, 75-8308.1 to 75-8308.7.
 - Food services program, application to state institutional schools, 75-8007.
 - Nomination by petition of school district trustees, 75-5914.1.
 - Warrants outstanding, cancellation, 75-6811.1.
- State board of education and component boards, 75-5609 to 75-5619.
- Teachers,
 - Indian heritage, preparation of teachers to teach, 75-6129 to 75-6132.
 - Re-employment or termination of nontenure teachers, notice, 75-6105.1.
 - Tax-deferred annuity program, 75-6219.
- University students' right of privacy, 75-8706 to 75-8711.
- Utility sites, approval and certification, 70-801 to 70-823.
- Validation of conveyance recorded after defective execution, 73-213.

ENACTED IN 1974

- Commission on federal higher education programs, 75-9301 to 75-9303.
- Consumer counsel, service of notice and contents, 70-710, 70-711, 72-170, 72-171.
- Educational broadcasting commission, 75-9001 to 75-9004.
- Elementary school district boundaries, review and adjustment, 75-6516.1, 75-6516.2.
- Equalization aid to public schools,
 - ANB for seventh and eighth grades, 75-6905.1.
 - Distribution of excess moneys, 75-6917.1.
- Proprietary post-secondary educational institutions, regulation and licensing, 75-9201 to 75-9212, 75-9215 to 75-9223.
- Public assistance,
 - Definitions, 71-201.1.
 - Dependent children, payment of assistance money as creation of debt, 71-511.
 - General relief, residency requirements, 71-302.2.
 - Personnel, 71-210.1.
 - Silicosis payments, surviving spouse of recipient, 71-1010.
 - Supplementary payments from state funds, 71-210.2, 71-210.3.
 - Veterans' welfare, "board" defined, 71-2201.
- Public service commission districts, 70-101.1.
- School trustees, conflict of interest in employment of county attorney, 75-8305.1.
- Special education programs, cost, rules, and accounting, 75-7813.1.
- Work-study program, 75-9101 to 75-9111.

ENACTED IN 1975

- Public assistance,
 - Adult Foster Family Care Act, 71-2003 to 71-2007.
 - Chronic renal disease treatment, 71-2501, 71-2502.

NEW LAWS IN VOLUME 4 (Part 2) (Continued)

Public Assistance (Continued)

Developmentally disabled advisory councils, regional councils, and co-operation by departments, 71-2406, 71-2407, 71-2414.
Housing accommodations, access to by blind and physically disabled persons, 71-1305.1, 71-1309.
Protective services for aged persons or disabled adults, 71-1914 to 71-1919.
Silicosis payments, eligibility of prior surviving spouses, 71-1010.1.
Social services fees authorized, 71-210.4, 71-210.5.

Public utilities,

Advertising and contributions, costs not deductible, 70-121.1.
Earmarked revenue fund, 70-824.
Environmental compatibility and public need certificates, suspension of action on certain applications for, 70-825 to 70-829.
Itemization of disallowed expenses in decision order rate changes, 70-136.

Schools,

Architectural services contracts, requirements, procedures, fees, 75-6815 to 75-6820.
Educational impact statements, definition, requirements, judicial enforcement, 75-8312, 75-8313.
Indian Teacher-Training Act of 1975, 75-6133 to 75-6136.
Instruction in public schools, 75-7503.1.
Joint construction and ownership of vocational-technical secondary schools, 75-7103.1, 75-7103.2.

ENACTED IN 1977

Adult basic education, 75-7514.1, 75-7515.1.
Auctions and auctioneers, penalty, enforcement, 74-714, 74-715.
Board of public education board of regents, state board of education, 75-5607.1, 75-5607.2.
Community college districts, powers and duties of trustees, 75-8117.1.
Consumer counsel and public service commission, roles, 70-707.1.
County superintendent of schools, 75-5808.1.
Crime Victims Compensation Act, 71-2601 to 71-2625.
Fire services training school, 75-7716 to 75-7725.
Interstate agreement on qualification of educational personnel, 75-6012 to 75-6014.
Private or parochial high schools, part-time assistant coaches, 75-8314.
Public assistance, audit of records, medical benefits, subrogation and third party liability, 71-231.4, 71-241.1.
Public service commission, adoption of rules for rate cases, 70-104.1.
Railroads, rate discrimination, penalty, 72-231.
Resident student financial assistance program, 75-9401 to 75-9408.
School districts and trustees, financial administration, credit of refund, 75-6811.2.
School terms and holidays, religious instruction released time, 75-7403.1.
Special education, private institution, regional services, 75-7809.1, 75-7817.
Subsidized Adoption Act of 1977, 71-1806 to 71-1812.
Teachers, retirement, 75-6207.1.

AMENDMENTS IN VOLUME 4 (Part 2)

Accreditation of schools, 75-7502.
Adult education and adult basic education, 75-7512.
Auctions and auctioneers, 74-701 to 74-713, 74-716.
Board of public education, board of regents, state board of education, 75-5607, 75-5612, 75-5614.
Community college districts, 75-8104, 75-8107, 75-8113, 75-8114, 75-8117, 75-8119, 75-8122, 75-8128, 75-8132.
Compulsory attendance at school, 75-6303, 75-6304.
Consumer counsel, 70-704, 70-707, 70-709.
County superintendent of schools, 75-5801, 75-5802, 75-5805, 75-5806, 75-5811.

AMENDMENTS IN VOLUME 4 (Part 2) (Continued)

Educational impact statements, 75-8312.

Educational media library, 75-7511.

Electric suppliers' territorial integrity, definitions, 70-502.

Equalization aid to schools, 75-6902 to 75-6908, 75-6912, 75-6913 to 75-6918, 75-6921 to 75-6923, 75-6927.

Federal aid to schools, administration, 75-7303.

Health education, purpose and legislative intent, 75-8901.

Oil, gas and mineral leases, release of, 73-115.

Opening and closing of schools, 75-6601, 75-6606, 75-6608, 75-6609.

Preschool programs, 75-7507.

Proprietary post-secondary educational institutions, 75-9212, 75-9215, 75-9216.

Public assistance,

Aging problems, 71-2301, 71-2302, 71-2304.

Aid to dependent children, 71-501, 71-503, 71-508, 71-509, 71-511.

Blind services, 71-1401, 71-1404, 71-1406 to 71-1409.

Burial of deceased military service men and women, 71-120.

Child welfare, 71-708 to 71-710.

Community based services for developmentally disabled, 71-2402 to 71-2414.

Community homes for developmentally disabled, 71-2001, 71-2003 to 71-2006.

Contract for maintenance or medical attendance of poor or indigent sick, 71-113.

General relief, 71-302.2, 71-303, 71-305 to 71-308, 71-311, 71-314.

Medical assistance, 71-1511, 71-1515 to 71-1517, 71-1520, 71-1524.

Old-age assistance, 71-412.

Privileges of blind and physically disabled persons, 71-1305 to 71-1307

Protective services for developmentally disabled, 71-1903.

Receipt of funds, disposition, 71-901.

Silicosis payments, 71-1001 to 71-1008.

State and county welfare departments, 71-207, 71-210 to 71-214, 71-216 to 71-218, 71-221 to 71-223, 71-226 to 71-230, 71-233 to 71-237, 71-239, 71-240, 71-242, 71-247, 71-250.

Tax levy for support of county poor and indigent, 71-106.

Veterans' welfare, 71-2202 to 71-2207.

Vocational rehabilitation, 71-2101 to 71-2108.

Public service commission, 70-101, 70-106, 70-111, 70-113, 70-119, 70-128, 70-129, 70-134.

Railroads,

Crossings, regulation, 72-703 to 72-709, 72-711.

General business regulation, 72-617, 72-618, 72-620, 72-622, 72-627, 72-652, 72-662, 72-664, 72-671, 72-672.

Liability for killing or injuring livestock, 72-406, 72-407, 72-409, 72-507.

Railroad regulation, 72-101.1, 72-103, 72-107, 72-116 to 72-118, 72-121, 72-124, 72-126, 72-127, 72-133 to 72-136, 72-142, 72-145 to 72-147, 72-150 to 72-152, 72-156, 72-158 to 72-160, 72-162 to 72-168.

Retail instalment sales, 74-602 to 74-606, 74-608, 74-610, 74-611.

School buses and pupil transportation, 75-7001 to 75-7006, 75-7008, 75-7013, 75-7016 to 75-7019, 75-7024.

School districts and trustees,

Appropriation accounts, 75-6809, 75-6812.

Bidding and contracts, 75-6808.

Bonds of school districts, 75-7102 to 75-7104, 75-7107, 75-7116, 75-7119, 75-7121, 75-7127, 75-7129.

Budget system, 75-6701, 75-6702, 75-6709, 75-6713, 75-6714, 75-6716, 75-6717, 75-6719 to 75-6721, 75-6727.

Building reserve fund, 75-7205.

Construction, leasing or rental of school facilities, 75-8206, 75-8207, 75-8209, 75-8211.

County attorney's duty, 75-8305.

County treasurer's duty with respect to funds, 75-6805, 75-6809, 75-6811.

Elections, 75-6410, 75-6412.

Elementary schools, 75-6313, 75-7201 to 75-7203.

Employment of teachers, superintendents and principals, 75-6104, 75-6105.1, 75-6106, 75-6109, 75-6112.

Extracurricular fund, 75-6323.

Financial administration, 75-6801 to 75-6803, 75-6805 to 75-6808, 75-6810.

Grants to schools, 75-7309.

AMENDMENTS IN VOLUME 4 (Part 2) (Continued)

School districts and trustees (Continued)

Housing and dormitory fund, 75-7214.

Leasing or rental of school facilities, 75-8211.

Reorganization of districts, 75-6503, 75-6505, 75-6508, 75-6509, 75-6513, 75-6516, 75-6517, 75-6523, 75-6525, 75-6532, 75-6534.

Retirement fund, 75-7204.

Sale of property no longer needed, 75-8205.

Trustees and officers, 75-5902, 75-5903, 75-5906 to 75-5908, 75-5912, 75-5915, 75-5916, 75-5918, 75-5924, 75-5927, 75-5928, 75-5931 to 75-5933, 75-5935, 75-5941.

Violations, penalties, 75-8307.

Warrants and vouchers, 75-6810, 75-6811.

School safety patrols, 75-8310.

School terms and holidays, 75-7402, 75-7403, 75-7406.

Special education, 75-7801 to 75-7811, 75-7813.1, 75-7814, 75-7816.

Superintendent of public instruction, 75-5701, 75-5702, 75-5707, 75-5709.

Taxable assessed value, statement furnished to localities, 75-6711.

Teachers,

Certification, 75-6001, 75-6008.

Retirement, 75-6201, 75-6202, 75-6204 to 75-6207, 75-6208, 75-6209, 75-6211 to 75-6214, 75-6216, 75-6217.

Television districts, budget, tax levy, 70-418.

Textbook dealers, 75-7604, 75-7605, 75-7607.

Traffic education program, 75-7906.

Tuition,

Elementary schools, 75-7201, 75-7202.

High schools, 75-6316, 75-6317.

Special education, 75-7810.

University system, 75-8601, 75-8611 to 75-8614.

Underground conversion of utilities, costs, 70-626.

University system,

Borrowing by regents, 75-8504.

Bureau of mines and geology, 75-8408.

Co-operative extension service duties, 75-8806.

Definitions, 75-8702.

Domicile, presumptions, rules and evidence, 75-8703, 75-8704.

Finance, 75-8605, 75-8609.

Indians, 75-8705.

Motor vehicle registration, 75-8503.3.

Name, use of prohibited, 75-8404.

Qualification of students, 75-8701.

Regents to accept public lands, 75-8427.

Research programs, powers of units, 75-8801.

Tuition and fees,

Children of prisoners of war and persons killed in action, 75-8612 to 75-8614.

Veterans, 75-8611.

Waiver for older students, 75-8601.

Utility sites, 70-801 to 70-804, 70-806 to 70-823.

Vocational-technical centers, 75-7709.

Work-study program, 75-9108.

MONTANA REVISED CODES

TITLE 70—PUBLIC UTILITIES

Chapter

1. Public service commission—regulation of public utilities, 70-101, 70-101.1, 70-104.1, 70-106, 70-111, 70-113, 70-119, 70-121.1, 70-128, 70-129, 70-134, 70-136.
2. Montana state board of food distributors ex officio Montana trade commission—Regulation of public mills, Repealed—Section 2, Chapter 256, Laws of 1973.
3. Telegraph, telephone and electric light and power lines, 70-304.
4. Television, 70-418.
5. Electric suppliers' territorial integrity, 70-502.
6. Underground conversion of utilities law, 70-626.
7. Consumer counsel, 70-701 to 70-707.1, 70-709 to 70-711.
8. Major Facility Siting Act, 70-801 to 70-804, 70-806 to 70-829.

CHAPTER 1—PUBLIC SERVICE COMMISSION— REGULATION OF PUBLIC UTILITIES

Section

- 70-101. Creation of public service commission.
- 70-101.1. Public service commission districts.
- 70-104.1. Adoption of rules for rate cases.
- 70-106. Power of commission to ascertain property values.
- 70-111. Records and reports of commission.
- 70-113. Schedules of rates, tolls and charges.
- 70-119. Complaints against public utility—hearing.
- 70-121.1. Advertising and contributions.
- 70-128. Action to set aside rates or charges fixed by commission.
- 70-129. Investigation of accidents—report as to accident.
- 70-134. Traveling expenses of commission.
- 70-136. Itemization of disallowed expenses by certain utilities.

70-101. (3879) Creation of public service commission. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act. The commission shall consist of five (5) members who shall be qualified electors of the district from which they are elected with each such member elected from a separate district of the state. At the next general election, there shall be elected five (5) commissioners for said commission except as hereinafter provided. Any commissioner whose term has not expired on the effective date of this act shall continue in office until the end of his term. Of the commissioners elected at the first election under this act, three (3) shall serve for a term of two (2) years, and two (2) for a term of four (4) years. At their first meeting the commissioners shall determine by lot which of them shall serve the terms less than four (4) years. Every term thereafter shall be for a period of four (4) years commencing from the expiration of the first term. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each

of said members of said board so elected shall serve until his successor is elected and qualified. A chairman shall be selected by the commission from its membership at the first meeting of each year after a general election.

Any vacancy occurring in the board shall be filled by appointment by the governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the board, there shall be elected one (1) member to fill out the unexpired term for which such vacancy exists.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R. C. M. 1921; amd. Sec. 1, Ch. 339, L. 1974.

State ex rel. Board of Railroad Commrs. v. District Court, 158 M 139, 488 P 2d 903.

Amendments

The 1974 amendment added the provisions pertaining to the election and terms of the members and filling vacancies in the board.

Jurisdiction of Commissioner

District court's writ of prohibition was vacated where it barred board of railroad commissioners, ex officio the public service commission, from performing its duties concerning water company's application to increase rates and charges.

Powers of Commission

Regulation of Montana public service commission limiting the liability of a telephone company arising from errors in or omissions of directory listings to the amount of charges for such of the subscriber's service as is affected during the period covered by the directory in which the error or omission occurs, is reasonable and binding on the subscriber. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, 160 M 443, 503 P 2d 526.

70-101.1. Public service commission districts. In this state there are five (5) public service commission districts, with one (1) commissioner elected from each district distributed as follows:

First district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux counties.

Second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater, Sweetgrass, Treasure, and Yellowstone counties.

Third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton, and Wheatland counties.

Fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and Silver Bow counties.

Fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders counties.

History: En. 70-101.1 by Sec. 2, Ch. 339, L. 1974. "Sections 70-102 and 72-101, R. C. M. 1947, are repealed."

Title of Act

An act to amend Section 70-101, R. C. M. 1947, to provide for a five (5) member elected public service commission from five (5) districts apportioned on the basis of population; and repealing Sections 70-102 and 72-101, R. C. M. 1947; and providing for an effective date:

Repealing Clause

Section 3 of Ch. 339, Laws 1974 read

Transition

Section 4 of Ch. 339, Laws of 1974 read "This act shall not affect the current terms of commissioners. The incumbent commissioner whose present term of office extends beyond January 1, 1975, shall, within fifteen (15) days after the effective date of this act, designate the district he will serve by written declaration filed with the secretary of state and he shall serve as commissioner from such

designated district to the expiration of such term. A failure by such incumbent commissioner to so designate his district shall subject such commission office to be open to election. The other two incumbent commissioners shall continue to serve to the expiration of such terms without designation of district, provided however, that there shall be elected in the primary and general elections of

1974, four (4) commissioners from the four (4) commission districts open for election."

Effective Date

Section 5 of Ch. 339, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

70-102. (3880) Repealed.

Repeal

Section 70-102 (Sec. 2, Ch. 52, L. 1913), establishing the railroad commissioners as

ex officio public service commissioners, was repealed by Sec. 24, Ch. 315, Laws of 1974; Sec. 3, Ch. 339, Laws of 1974.

70-103. (3881) "Public utility" defined.

Limited Membership Association Not Public Utility

Defendant association was not public utility where only members were allowed to use water system furnished by associa-

tion, members used system on nonprofit cost-sharing basis and were bound by its rules and regulations. Lockwood Water Users Assn. v. Anderson, — M —, 542 P 2d 1217.

70-104. (3882) Power to prescribe rules of procedure—judicial power.

Automatic Rate Increase Hearings

Commission authorization of automatic adjustment of electric company rates for increases or decreases in price of fuel was fair and equitable exercise of supervisory and regulatory powers of commission. Montana Consumer Counsel v. Public Service Commission, — M —, 541 P 2d 770.

Rate-Increase Hearings

Where electric company applied for increase in utility rates to offset increase in price of fuel in 1974, public service commission was correct in refusing to expand hearing into full-scale examination of general rate structure and rate of return, since commission had held full-scale hearings in 1972. Montana Consumer Counsel v. Public Service Commission, — M —, 541 P 2d 770.

70-104.1. Adoption of rules for rate cases. The commission shall adopt such rules of practice and procedure for the filing, investigation, and hearing of petitions or applications to increase or decrease rates and charges of railroads, motor carriers, and public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner. The rules shall be promulgated and adopted prior to October 31, 1977.

History: En. 70-104.1 by Sec. 1, Ch. 137, L. 1977.

sion fails to adopt rules in accordance with 70-104.1 prior to the time designated, the appropriation of the 1977 general session to the public service commission shall be subject to revision by the legislature at any special or general session."

Title of Act

An act to mandate the public service commission to adopt rules of practice and procedure for rate cases; and providing an immediate effective date.

Appropriation Subject to Revision

Section 2 of Ch. 137, Laws 1977 read "In the event the public service commis-

Effective Date

Section 3 of Ch. 137, Laws 1977 provided the act should be effective on its passage and approval. Approved March 25, 1977.

70-106. (3884) Power of commission to ascertain property values. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. The commission is not bound to accept or use

any particular value in determining rates, provided that if any value is used, such value may not exceed the original cost of the property. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913; Amendments

re-en. Sec. 3884, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1975.

The 1975 amendment inserted the second sentence.

70-111. (3889) Records and reports of commission. The reports, records, accounts, files, papers, and memoranda of every nature in the possession of the public service commission are open to the public at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety (90) days after the acquisition of the facts or information.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R. C. M. 1921; amd. Sec. 29, Ch. 93, L. 1969; amd. Sec. 7, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted a first sen-

tence requiring the commission to make reports as provided in section 82-4002 conforming to those of the railroad commission; substituted "public service commission" for "commission" after "possession of the"; and made minor changes in phraseology.

70-113. (3891) Schedules of rates, tolls and charges. Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except as approved by the commission or upon the passage of 9 months. Before it may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's

service area or before any change may become effective due to the passage of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of section 82-4209(2) in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice shall announce a hearing on the proposed change and shall inform interested persons how they may petition the commission to become parties to the hearing. The commission shall proceed to conduct the hearing under the Montana Administrative Procedure Act. The final decision of the commission in any matter decided after a hearing conducted pursuant to this section shall conform to the requirements of a decision in a contested case under the Montana Administrative Procedure Act. The consumer counsel may in his discretion petition to become a party to the hearing.

Notwithstanding any provision of this title to the contrary, and notwithstanding the existence of and authorization for the office of consumer counsel, the rates, tolls, or charges set forth in any schedule hereafter filed with the commission pursuant to this section shall become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever shall occur first; provided, however, that if the rates, tolls, or charges become effective because of the passage of 9 months' time, the revenues collected thereunder shall be subject to rebate, plus interest at the rate of 10% per year, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenues which are less than those collected under the filed schedules. The commission may, in its discretion, temporarily approve increases pending a hearing or final decision. If the final decision is to disapprove the increase the commission shall order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval. An order of the commission approving or denying a temporary rate increase shall be an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 435 and once by Ch. 467. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1975 amendment completely rewrote the third paragraph; and added the fourth paragraph. For prior text, see parent volume.

Chapter 435, Laws of 1977, added "or upon the passage of 9 months" to the first sentence of the third paragraph; inserted "or before any change may become effective

due to the passage of 9 months" in the second sentence of the third paragraph; inserted the fifth sentence of the third paragraph; substituted the first sentence of the last paragraph for a sentence which required the final decision of the commission in any matter decided after a hearing conducted pursuant to this section to conform to the requirements of a decision in a contested case under the Administrative Procedure Act; and made a minor change in phraseology.

Chapter 467, Laws of 1977, rewrote the second sentence of the fourth paragraph which read: "The commission may temporarily approve an increase pending a hearing and final decision"; and added the last sentence of the fourth paragraph.

Effective Dates

Section 2 of Ch. 435, Laws 1977 provided the act should be effective upon its pas-

sage and approval. Approved April 19, 1977.

Section 2 of Ch. 467, Laws 1977 provided the act should be effective on its passage and approval. Approved April 26, 1977.

Automatic Rate Increase Hearings

Commission authorization of automatic adjustment of electric company rates for increases or decreases in price of fuel was fair and equitable exercise of supervisory and regulatory powers of commission. *Montana Consumer Counsel v. Public Service Commission*, — M —, 541 P 2d 770.

Rate-Increase Hearings

Where electric company applied for increase in utility rates to offset increase in price of fuel in 1974, public service commission was correct in refusing to expand hearing into full-scale examination of general rate structure and rate of

return, since commission had held full-scale hearings in 1972. *Montana Consumer Counsel v. Public Service Commission*, — M —, 541 P 2d 770.

Temporary Rate Increase—Determination of Amount

Where the public service commission allowed a temporary gas rate increase equivalent to 6/11ths of the amount requested, based on the commission's calculations that such an amount would be adequate to meet increased costs if the petitioner breached certain "take or pay" contracts, it acted in excess of its authority, since the effect of the order was to force petitioner to break its contracts, incur legal liability on that account, diminish its earnings and deprive consumers of supply. *State ex rel. Power Co. v. Department of Public Service Regulation, Public Service Commission*, — M —, 548 P 2d 136.

70-118. (3896) Repealed.

Repeal

Section 70-118 (Sec. 16, Ch. 52, L. 1913; Sec. 1, Ch. 188, L. 1919), relating to em-

ploying an engineer and other help, and the commission secretary's salary, was repealed by Sec. 24, Ch. 315, Laws of 1974.

70-119. (3897) Complaints against public utility—hearing. Upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club, or by any body politic or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms, or corporations are directly affected thereby that any of the rates, tolls, charges, or schedule, or any joint rate or rates, are in any way unreasonable or unjustly discriminatory, or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission, or delivery or furnishing of heat, light, water, or power, or any service in connection therewith, or the conveyance of any telegraph or telephone message, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act complained of, shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility, providing that the hearing is held within twenty (20) days unless further delayed by consent of all parties.

The commission shall give the public utility and the complainant or complainants at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the

commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R. C. M. 1921; amd. Sec. 1, Ch. 138, L. 1975.

Amendments

The 1975 amendment added "except the commission may issue an order * * * consent of all parties" at the end of the first paragraph.

Due Process

Where public service commission gave notice of hearing on electric company's application for increased prices to offset increases in its cost, by sending news releases to radio, television and newspapers, and where consumer counsel participated in all proceedings throughout, public was afforded reasonable opportunity to participate prior to final decision of commission; no person was deprived of right to examine documents or observe deliberations; and no person was deprived of property without due process of law. Montana

Consumer Counsel v. Public Service Commission, — M —, 541 P 2d 770.

Jurisdiction

This section gives agency jurisdiction to hold hearings concerning rate increases for utilities even though no increase could be made at the time because of federal wage and price freeze. State ex rel. Department of Public Service Regulation v. District Court, 158 M 88, 488 P 2d 1147.

Rate-Increase Hearings

Where electric company applied for increase in utility rates to offset increase in price of fuel in 1974, public service commission was correct in refusing to expand hearing into full-scale examination of general rate structure and rate of return, since commission had held full-scale hearings in 1972. Montana Consumer Counsel v. Public Service Commission, — M —, 541 P 2d 770.

70-121.1. Advertising and contributions. Costs or expenses incurred by public utilities for advertising, for transfers of funds without full and adequate consideration, for contributions, for donations, and for gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates which may be charged by the public utilities, pursuant to Title 70, R. C. M. 1947. This section shall not apply to advertising which encourages the conservation of energy, product safety, or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section shall not apply to advertising which relates to special equipment that is available to aid the handicapped or to special services that are designed to protect the public health, welfare and safety or promote more efficient use of a communications system.

History: En. 70-121.1 by Sec. 1, Ch. 297, L. 1975.

Title of Act

An act to disallow consideration of advertising expenses and contributions in setting rates charged by public utilities.

70-123. (3901) Repealed.

Repeal

Section 70-123 (Sec. 21, Ch. 52, L. 1913), relating to records of proceedings before

the public service commission or its representatives, was repealed by Sec. 2, Ch. 475, Laws 1977.

70-128. (3906) Action to set aside rates or charges fixed by commission. (1) Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within 30 days commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within 20 days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.

(2) to (6) * * * [Same as parent volume.]

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977.

Amendments

The 1977 amendment reduced the number of days to commence an action against the commission in the first sentence of subsection (1) from 90 days to 30; and reduced from 30 to 20 the number of days the commission has to file an answer in the second sentence of subsection (1).

Repealing Clause

Section 2 of Ch. 475, Laws 1977 read "Section 70-123, R. C. M. 1947, is repealed."

Civil Rules

Rules of Civil Procedure were not applicable to proceeding under this section, being excepted by Rule 81. Public Service Comm. of Montana v. District Court, — M —, 511 P 2d 334.

Standing

Where member of public service commission dissented on decision to increase cost to customers of electric company as fuel costs increased and sued to vacate and set aside commission's rate order, he had no standing to bring suit because he was not "party in interest," which means party outside decision-making process. McTaggart v. Public Service Commission, — M —, 541 P 2d 778.

70-129. (3907) Investigation of accidents—report as to accident. (1) The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death or injury to any person of such gravity as to require 3 days or more of hospitalization. The report of the accident shall be filed in the office of the commission.

(2) It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident in the public utility's operation and resulting in death or injury to any person of such gravity as to require hospitalization, to report the accident within the next two business days, followed by written report in which shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. For any other accident occurring in a public utility's operation and resulting in injury, a public utility shall submit a written report to the commission within the 20 days after the occurrence of the accident. The commission shall prescribe forms for the purpose of making such written reports.

History: En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R. C. M. 1921; amd. Sec. 1, Ch. 472, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; substituted "3 days or more of hospitalization" at the end of

the first sentence in subsection (1) for "the attention of a physician or surgeon"; substituted "report of the accident shall be filed" in the second sentence of subsection (1) for "testimony taken at such hearing shall be transcribed and filed"; inserted "in the public utility's operations and resulting in death or injury to any person of such gravity as to require hospitalization" in the first sentence of subsection

(2); substituted "report the accident within the next two business days" in the first sentence of subsection (2) for "report by telegraph"; inserted the second sentence of subsection (2); deleted a former last sentence of subsection (2) requiring reports of accidents to be included in the commission's annual report to the governor; and made minor changes in phraseology and punctuation.

70-134. (3912) Traveling expenses of commission. The commission, secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their expenses while traveling on the business of the commission, as provided for in sections 59-538, 59-539, and 59-801. Such expenditures shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission or his designee.

History: En. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R. C. M. 1921; amd. Sec. 47, Ch. 439, L. 1975; amd. Sec. 1, Ch. 205, L. 1977.

Amendments

The 1975 amendment deleted "necessary" before "expenses" in the first sen-

tence; and substituted "as provided for in sections 59-538, 59-539, and 59-801" for "including the cost of lodging and subsistence" at the end of the first sentence.

The 1977 amendment added "or his designee" at the end of the section; and made minor changes in phraseology and punctuation.

70-136. Itemization of disallowed expenses by certain utilities. The public service commission, in any decision ordering a change in the rates which may be charged for electricity or natural gas, shall list each expenditure submitted by the utility for allowance as an operating cost which is disallowed by the commission as an element of operating costs. The list of disallowed expenditures shall appear in the written decision of the commission and shall itemize each expenditure by amount, category, and purpose.

History: En. 70-136 by Sec. 1, Ch. 290, L. 1975.

Title of Act

An act requiring the public service com-

mission to itemize expenditures disallowed as operating costs in gas or electric rate-making proceedings.

CHAPTER 2—MONTANA STATE BOARD OF FOOD DISTRIBUTORS EX OFFICIO MONTANA TRADE COMMISSION—REGULATION OF PUBLIC MILLS (Repealed—Section 2, Chapter 256, Laws of 1973)

70-201 to 70-233. (3914 to 3946) Repealed.

Repeal

Sections 70-201 to 70-233 (Sec. 2, p. 72, L. 1879; Secs. 3271, 3272, Pol. C. 1895; Secs. 1 to 31, Ch. 223, L. 1919; Sec. 1,

Ch. 123, L. 1943), relating to the Montana trade commission and the regulation of public mills, were repealed by Sec. 2, Ch. 256, Laws 1973.

CHAPTER 3—TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT AND POWER LINES

Section

70-304. Underground power lines in new service areas.

70-304. Underground power lines in new service areas. A firm, agency, or person exercising the rights conferred by section 70-301 shall install

underground all lines used for the distribution of electricity in a new service area when technically and economically feasible. As used in this section, "new service area" means any subdivision or group of newly constructed or newly installed dwellings (including mobile homes) or commercial buildings which, when occupied, will generate at least five contracts for the supply of electricity, and "lines used for the distribution of electricity" means all the distribution lines in the new service area through which electricity passes before it is utilized by the consumer and the consumer's dwelling or place of business. The public service commission may make rules to implement this section.

History: En. 70-304 by Sec. 1, Ch. 125, L. 1974.

Title of Act

An act requiring the underground installation of electric power distribution lines in new service areas.

CHAPTER 4—TELEVISION

Section

70-418. Budget for district—levy and certification of tax.

70-401 to 70-407. Repealed.

Repeal

Sections 70-401 to 70-407 (Secs. 1 to 7, Ch. 26, L. 1959), relating to authorization, licensing, and regulation of VHF booster

and VHF translator television broadcasting stations, were repealed by Sec. 1, Ch. 58, Laws 1975.

70-418. Budget for district—levy and certification of tax. The board of trustees shall, from said list so prepared by the county assessor, remove therefrom the names of any persons who have claimed exemption under this act and shall prepare a budget for the expenses for the next year, which budget together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this act shall be presented by September 1 to the board of county commissioners who shall levy the tax requested by said trustees; provided however, the board of county commissioners shall levy such tax in accordance with the request herein mentioned, which said tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

History: En. Sec. 11, Ch. 198, L. 1961; amd. Sec. 1, Ch. 79, L. 1975.

Amendments

The 1975 amendment deleted "said tax

shall not exceed the sum of fifteen dollars (\$15.00) per annum, per person owning a television set and" after "provided however" near the middle of the section.

CHAPTER 5—ELECTRIC SUPPLIERS' TERRITORIAL INTEGRITY

Section

70-502. Definitions.

70-502. Definitions. When used in this act:

(1) to (4) * * * [Same as parent volume.]

(5) The term "line" means any electric conductor operating at a nominal voltage level of thirty-four thousand five hundred (34,500) volts or less, measured phase-to-phase.

(6) and (7) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 7, L. 1971; amd. Sec. 1, Ch. 68, L. 1975.

Amendments

The 1975 amendment reduced the nominal voltage level in subdivision (5) from 69,000 to 34,500 volts or less.

CHAPTER 6—UNDERGROUND CONVERSION OF UTILITIES LAW

Section

70-626. Conversion costs.

70-626. Conversion costs. In determining the conversion costs included in the cost and feasibility report required by section 70-607, the public utility is entitled to amounts sufficient to repay them for the following, as computed and reflected by the uniform system of accounts approved by the public service commission, federal communications commission, or federal power commission, or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility.

1. * * * [Same as parent volume.]

2. The estimated costs of removing the overhead electric and communication facilities, less the salvage value of the facilities removed.

3. and 4. * * * [Same as parent volume.]

History: En. Sec. 26, Ch. 429, L. 1971; amd. Sec. 8, Ch. 315, L. 1974.

ence to "section 70-607" for reference to "section 70-626"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted refer-

CHAPTER 7—CONSUMER COUNSEL

Section

70-701. Title and purpose of act.

70-702. Definitions.

70-703. Legislative consumer committee created—composition—terms—officers.

70-704. Meetings of committee—expenses of members reimbursed.

70-705. Appointment of consumer counsel—qualifications.

70-706. Staff of counsel.

70-707. Powers and duties of consumer counsel—annual report.

70-707.1. Roles of public service commission and consumer counsel.

70-709. Disposition of fees—quarterly report and fee from regulated companies—penalty for violation—evidence of violation.

70-710. Notice to be served on consumer counsel.

70-711. Notice to advise public of availability of consumer counsel.

70-701. Title and purpose of act. This act shall be known and may be cited as "The Consumer Counsel Act."

History: En. Sec. 1, Ch. 65, L. 1973.

counsel to comply with article XIII, section 2 of the 1972 Montana constitution.

Title of Act

An act to create the office of consumer

70-702. Definitions. As used in this act:

- (1) "Committee" means the legislative consumer committee.
- (2) "Commission" means the public service commission created in section 70-101, R.C.M. 1947.
- (3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

History: En. Sec. 2, Ch. 65, L. 1973.

70-703. Legislative consumer committee created—composition—terms—officers. (1) There is a legislative consumer committee consisting of two (2) members of the senate and two (2) members of the house of representatives.

(2) Members of the first committee shall be appointed within fifteen (15) days after the passage and approval of this act, in the same manner as standing committees of the respective houses are appointed. Subsequent members shall be appointed in the same manner before the sixtieth legislative day of the legislative session following the expiration of the terms of the members of the committee.

(3) Any person who is an employee, agent, officer, partner, or director of any regulated company, or who has served a regulated company in any capacity within the three (3) years previous to his appointment may not be a member of the committee.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a legislator by the remaining members of the committee.

(5) No more than one (1) of the appointees of each house may be members of the same political party.

(6) A member shall serve until his term of office as a legislator ends and until his successor is appointed.

(7) The committee shall elect one (1) of its members as chairman and such other officers as it determines necessary.

History: En. Sec. 3, Ch. 65, L. 1973.

Compiler's Notes

The approval date of Ch. 65, Laws 1973 was February 25, 1973.

70-704. Meetings of committee—expenses of members reimbursed. The committee shall meet at least once each quarter to advise and consult with the consumer counsel. Committee members are entitled to receive compensation and expenses as provided in 43-310.1.

History: En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977.

The 1977 amendment substituted "are entitled to receive compensation and expenses as provided in 43-310.1" for "shall be reimbursed from the appropriation to the office of the consumer counsel for their actual and necessary expenses incurred and an additional sum equal to a legislator's pay while attending such meetings" in the second sentence.

Amendments

The 1974 amendment deleted "Quarterly" before "Meetings of committee" in the caption and inserted "at least" before "once each quarter" in the first sentence.

70-705. Appointment of consumer counsel—qualifications. The committee shall appoint a consumer counsel and set his salary. The consumer counsel shall have the following minimum qualifications and such additional qualifications as the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

History: En. Sec. 5, Ch. 65, L. 1973.

70-706. Staff of counsel. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this act, within the limits of legislative appropriation.

History: En. Sec. 6, Ch. 65, L. 1973.

70-707. Powers and duties of consumer counsel—annual report. The consumer counsel:

(1) may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

(2) may institute proceedings before the commission against regulated companies;

(3) has all the investigatory powers necessary to perform his duties as provided herein and all discovery powers sanctioned by the Montana rules of civil procedure and the Montana Administrative Procedure Act. It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure shall be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by section 70-113, R.C.M. 1947, shall be suspended pending order of the district court.

(4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

(5) may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof including review of decisions rendered by, or failure to act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to section 93-4215;

(6) shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;

(7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee; and

(8) has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977.

Amendments

The 1974 amendment substituted "may" for "shall" at the beginning of subdivision (1); substituted "and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act" for "which may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act" following "provided herein" in subdivision (3); and rewrote subdivision (5) which read: "May institute ap-

propriate action in the state and federal courts in the name of the consuming public of the state of Montana for review of decisions rendered by the commission."

The 1975 amendment added to the end of subdivision (5) "and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to section 93-4215."

The 1977 amendment added the last three sentences to subdivision (3); and made minor changes in phraseology and punctuation.

Repealing Clause

Section 2 of Ch. 136, Laws 1977 read "Section 70-708, R. C. M. 1947, is repealed."

70-707.1. Roles of public service commission and consumer counsel.

In any case involving an application by a regulated entity to the public service commission for authority to increase its rates, which is actively contested by the consumer counsel, the public service commission shall leave representation of the interests of consumers to the consumer counsel when he timely petitions to become a party to such case, provided however, nothing contained herein prohibits the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address such issue and such counsel fails to introduce sufficient or adequate evidence.

History: En. 70-707.1 by Sec. 1, Ch. 474, L. 1977.

Title of Act

An act to clarify the respective roles of

the consumer counsel and the public service commission in adversary utility rate cases being conducted by the public service commission.

70-708. Repealed.

Repeal

Section 70-708 (Sec. 8, Ch. 65, L. 1973), relating to the issuance of subpoenas to

witnesses before the public service commission, was repealed by Sec. 2, Ch. 136, Laws 1977.

70-709. Disposition of fees—quarterly report and fee from regulated companies—penalty for violation—evidence of violation. (1) There is an account in the earmarked revenue fund to which all fees collected here-

under shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof, and shall at that time pay to the department of revenue a fee based on a fraction of the gross operating revenue reported, as determined by the department of revenue under subsection (3) of this section.

(3) Within thirty (30) days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies, for the previous fiscal year,

(b) compute the percentage of the amount determined in subsection (3) (a) which will produce an amount equal to the appropriation to the consumer counsel for each year of the appropriation, except that no regulated company owned and operated by any municipal corporation within this state shall be required to pay a sum in excess of six-hundredths of one per cent (.06 of 1%) of its gross operating revenue, and

(c) give notice by mail to each regulated company of the percentage determined in subsection (3) (a) and (b) to be applied to the gross operating revenue reported under subsection (2) above, to determine the amount of the fee to be paid in each year of the appropriation.

(4) In the event the fee charged in any one (1) year of the biennium is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required for the first year of the next biennial appropriation before the determination for that year required by subsection (3)(a) of this act is made.

(5) Any regulated company, or any officer or employee of any regulated company, who, with intent to evade any fee or any requirement of this act or any lawful requirement of the commission thereunder, fails to pay the fee, or to make, render, sign or verify any statement, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars (\$1,000), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars (\$1,000) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(6) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that in-

formation has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974.

Amendments

The 1974 amendment added the exception at the end of subdivision (3)(b) and inserted the reference to subdivision (3) (b) in subdivision (3)(c).

Separability Clause

Section 10 of Ch. 65, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

70-710. Notice to be served on consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

History: En. 70-710 by Sec. 1, Ch. 212, L. 1974.

Title of Act

An act to provide for the giving of notice of public hearings regarding the

regulation of utilities to the Montana consumer counsel; and for making reference to the availability of the Montana consumer counsel in notices of hearings by adding the following sections to Title 70, R. C. M. 1947.

70-711. Notice to advise public of availability of consumer counsel. All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 70-711 by Sec. 2, Ch. 212, L. 1974.

CHAPTER 8—MAJOR FACILITY SITING ACT

- Section**
- 70-801. **Short title.**
 - 70-802. **Policy and legislative findings.**
 - 70-803. **Definitions.**
 - 70-804. Certificate from board required prior to construction of facility—exemptions.
 - 70-806. Application for certification—filing and contents—filing fees—notice of completion of facility—further fees—refund—proof of service on municipalities—amendment of application or certification—notice of filing.
 - 70-807. Study, evaluation and report on proposed facility—hearing on application for amendment of certificate—hearings.
 - 70-808. Parties to certification proceeding—waiver by failure to participate.
 - 70-809. Record of hearing—procedure—rules of evidence—burden of proof.
 - 70-810. Decision of board—findings necessary for certificate—conditions imposed.
 - 70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required.
 - 70-812. Judicial review of board decision.
 - 70-813. Jurisdiction of courts restricted.
 - 70-814. Annual long-range plan submitted—contents—available to public.

- 70-815. Study of planned facilities included in annual long-range report.
- 70-816. Environmental factors considered in evaluating long-range plans.
- 70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate—exceptions.
- 70-818. Revocation or suspension of certificate—voiding of application.
- 70-819. Enforcement of chapter by residents of state—statement of failure to enforce act—mandamus—private suits for damages.
- 70-820. Adoption of rules—monitoring of facilities.
- 70-821. Penalties for violation of chapter—civil action by attorney general.
- 70-822. Grants, gifts and funds.
- 70-823. Chapter supersedes other laws or regulations.
- 70-824. Earmarked revenue fund.
- 70-825. Statement of legislative findings and policy.
- 70-826. Definitions.
- 70-827. Suspension of action.
- 70-828. Other application suspensions.
- 70-829. Positive action allowed.

70-801. Short title. This chapter shall be known and may be cited as the Montana Major Facility Siting Act.

History: En. Sec. 1, Ch. 327, L. 1973; amd. Sec. 1, Ch. 494, L. 1975.

Title of Act

An act to vest in the department and board of natural resources and conservation the authority to require and review long-range planning by certain utilities, to give approval to energy generation and conversion plant sites and associated fa-

cilities, to require preconstruction certification of such facilities; providing penalties for violation of this act; and providing an effective date.

Amendments

The 1975 amendment substituted "this chapter" for "this act"; and substituted the present short title for "the Montana Utility Siting Act of 1973."

70-802. Policy and legislative findings. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products, and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this chapter.

History: En. Sec. 2, Ch. 327, L. 1973; amd. Sec. 2, Ch. 494, L. 1975.

Amendments

The 1975 amendment inserted "and

other products" after "electricity, energy" in the first sentence of the second paragraph; substituted "chapter" for "act" at the end of the section; and made minor changes in phraseology.

70-803. Definitions. In this chapter, unless the context requires otherwise:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(3) "Facility" means:

(a) each plant, unit, or other facility and associated facilities, except for oil and gas refineries,

(i) designed for, or capable of, generating fifty (50) megawatts of electricity or more, or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(ii) designed for, or capable of, producing twenty-five million (25,000,000) cubic feet of gas per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iii) designed for, or capable of, producing twenty-five thousand (25,000) barrels of liquid hydrocarbon products per day or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(iv) designed for, or capable of, enriching uranium minerals, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(v) designed for, or capable of, utilizing, refining, or converting five hundred thousand (500,000) tons of coal per year or more, or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000);

(b) each electric transmission line and associated facilities of a design capacity of more than sixty-nine (69) kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of two hundred thirty (230) kilovolts or less and ten (10) miles or less in length;

(c) each pipeline and associated facilities designed for, or capable of, transporting gas, water, or liquid hydrocarbon products from or to a facility located within or without this state of the size indicated in subsection (3)(a) of this section;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy;

(e) any underground in situ gasification of coal.

(4) "Associated facilities" include, but are not limited to, transportation links of any kind, aqueducts, diversion dams, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility.

(5) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility, but does

not mean changes needed for temporary use of sites or routes for non-utility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means, if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources, but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 93, chapter 99, for land or rights of way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (3)(b) or (c), including upgrading to a design capacity covered by subsection (3)(b), except that the term does not include normal maintenance or repair of an existing facility.

(6) "Municipality" means any county or municipality within this state.

(7) "Person" means any individual, group, firm, partnership, corporation, co-operative, association, government subdivision, government agency, local government, or other organization or entity.

(8) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery or furnishing of heat, electricity, gas, hydrocarbon products or energy in any form for ultimate public use.

(9) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(10) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the certificate was issued.

History: En. Sec. 3, Ch. 327, L. 1973; amd. Sec. 1, Ch. 231, L. 1974; amd. Sec. 1, Ch. 268, L. 1974; amd. Sec. 3, Ch. 494, L. 1975.

Amendments

Chapter 231, Laws of 1974, added the last sentence of subdivision (5)(a) to include the commencement of eminent domain proceedings within the meaning of "commence to construct."

Chapter 268, Laws of 1974, added subdivision (3)(d); inserted the subdivision designation (a) in subsection (5); and added subdivision (5)(b).

The 1975 amendment added "provided for in Title 82A, chapter 15" at the end of subdivision (1); added "provided for in section 82A-1509" at the end of subdivision (2); substituted the present subdivision (3)(a) for "any energy-generating and conversion plant and associated facilities"; reduced the gas production capabilities in subdivision (3)(a)(ii) from 100 million to 25 million cubic feet per day; reduced the hydrocarbon production capability in subdivision (3)(a)(iii) from 50,

000 to 25,000 barrels per day; added "or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000)" in subdivision (3)(a)(iv); added subdivision (3)(a)(v); substituted "each" for "an" at the beginning of subdivision (3)(b); increased the capacity in subdivision (3)(b) from 34.5 to 69 kilovolts; excluded electric transmission lines of small capacity and length; deleted former exceptions, (3)(b)(i) to (3)(b)(v); substituted "each pipe line" for "a gas or liquid transmission line" in subdivision (3)(c); inserted "water" after "gas" in subdivision (3)(c); substituted "from or to a facility located within or without this state" for "from a gasification or liquefaction facility" in subdivision (3)(e); added subdivision (3)(e); inserted "transmission substations, storage ponds, reservoirs" in subsection (4); inserted "or product" after "energy form" in subsection (4); added the exception at the end of subsection (4); deleted the last sentence of subdivision (5)(a) which read: "The words do include the commencement of eminent domain proceedings under Title

93, chapter 99, R. C. M. 1947, for land or rights of way upon which a utility facility may be constructed"; inserted "a gasification facility or a" after "future development of" in subdivision (5)(b); added subdivisions (5)(c) and (d); added "or entity" at the end of subsection (7); inserted "hydrocarbon products" in subsection (8); inserted "under this chapter" in

subsection (9); added subsection (10); and made numerous minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 231, Laws 1974 provided the act should be effective from and after its passage and approval. Approved March 16, 1974.

70-804. Certificate from board required prior to construction of facility—exemptions. (1) A person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility and public need issued with respect to the facility by the board. A facility, with respect to which a certificate is issued, may not thereafter be constructed, operated or maintained except in conformity with the certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this chapter.

(2) A certificate may be transferred, subject to the approval of the department, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(3) This chapter does not apply to a facility over which an agency of the federal government has exclusive jurisdiction.

(4) The board may adopt reasonable rules establishing exemptions from this chapter for the relocation, reconstruction, or upgrading of a facility that would otherwise be covered by this chapter and that is unlikely to have a significant environmental impact by reason of length, size, location, available space or right of way, or construction methods.

(5) A certificate is not required under this chapter for a facility under diligent on-site physical construction or in operation on January 1, 1973.

History: En. Sec. 4, Ch. 327, L. 1973; amd. Sec. 4, Ch. 494, L. 1975.

Amendments

The 1975 amendment deleted "utility" before "facility" near the beginning of the first sentence in subsection (1); substituted "first applying for and obtaining" for "first having obtained" in the first sentence of subsection (1); inserted "of environmental compatibility and public

needs" in the first sentence of subsection (1); substituted "is issued" for "is required" in the second sentence of subsection (1); substituted "chapter" for "act" at the end of subsection (1) and at the beginning of subsection (3); deleted "utility" before "facility" in subsection (3); added subsections (4) and (5); and made minor changes in phraseology, punctuation and style.

70-805. Repealed.

Repeal

Section 70-805 (Sec. 5, Ch. 327, L. 1973; Sec. 5, Ch. 494, L. 1975), relating to a surcharge on electric energy producers'

license tax and a tax on gasification, liquefaction, and uranium enrichment facilities, was repealed by Sec. 7, Ch. 401, Laws 1977.

70-806. Application for certification—filing and contents—filing fees—notice of completion of facility—further fees—refund—proof of service on municipalities—amendment of application or certification—notice of filing. (1) (a) An applicant for a certificate shall file with the department a

verified application, in such form as the board by rule or the department by order prescribes, containing the following information:

- (i) a description of the location and of the facility to be built thereon;
- (ii) a summary of any studies which have been made of the environmental impact of the facility;
- (iii) a statement explaining the need for the facility;
- (iv) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and
- (v) such other information as the applicant considers relevant or as the board by rule or the department by order requires. A copy or copies of the studies referred to in clause (ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(b) An application may consist of an application for two (2) or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(2) (a) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee with the application, based upon the estimated cost of the facility according to the declining scale which follows: two percent (2%) of any estimated cost up to one million dollars (\$1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars (\$20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars (\$20,000,000); and up to one hundred million dollars (\$100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million (\$100,000,000) and up to three hundred million dollars (\$300,000,000); plus one-eighth of one percent (.125%) of any amount of estimated cost over three hundred million dollars (\$300,000,000). The revenues derived from the filing fee shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this chapter with respect to the facility covered by the certificate for a period not to exceed five (5) years after the certificate is issued for facilities defined in 70-803 (3)(b) and (c) or not to exceed ten (10) years after the certificate is issued for facilities defined in 70-803 (3)(a), (d), and (e). If an application consists of a combination of two (2) or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(b) The applicant is entitled to an accounting of moneys expended and to a refund of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter.

(c) The department may contract with a potential applicant under this chapter, in advance of the filing of a formal application, for the development of information or provision of services required hereunder. Payments made to the department under such a contract shall be credited against the fee payable hereunder.

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each municipality

and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of the facility is to be located, both as primarily and as alternatively proposed. The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) An application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in those newspapers as will serve substantially to inform those persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section. If an amendment to an original application would result in a substantial change of the original application, such an amendment shall be considered as a new application and a new filing fee shall be required.

(7) A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 70-803(3) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative locations, and such information as the board by rule or department by order requires. An applicant complying with this subsection is entitled to a 5% reduction of the filing fee required under subsection (2)(a).

History: En. Sec. 6, Ch. 327, L. 1973; amd. Sec. 1, Ch. 115, L. 1974; amd. Sec. 2, Ch. 268, L. 1974; amd. Sec. 1, Ch. 270, L. 1975; amd. Sec. 6, Ch. 494, L. 1975; amd. Sec. 1, Ch. 179, L. 1977.

Amendments

Chapter 115, Laws of 1974, added subsection (8).

Chapter 268, Laws of 1974, substituted references to "70-803(3)(a), 70-803(3)(b)(iv), 70-803(3)(c), and 70-803(3)(d)" and to "70-803(3)(b)(ii)" in subsection (1) for references to "3(3)(a), 3(3)(b)(iv), and to "3(c)" and "3(3)(b)(ii)."

Chapter 270, Laws of 1975, substituted "earmarked revenue fund for the use of the department in administering this chapter" near the beginning of subdivision (2)(a) for "state general fund."

Chapter 494, Laws of 1975, rewrote the introductory sentence of subsection (1) which read "At least two (2) years prior to anticipated commencement of construction of a utility facility as defined in sections 70-803(3)(a), 70-803(3)(b)(iv), 70-803(3)(c), and 70-803(3)(d) and at least nine (9) months prior to the anticipated commencement date of the construction of a utility facility as defined in section 70-803(3)(b)(iii), an applicant for a certificate shall file with the department an application, in such form as the department may prescribe, containing the following information"; redesignated former subdivisions (a) through (e) in subsection (1) as subdivisions (a)(i) through (a)(v); added subdivision (1)(b); redesignated former subsection (2) as (2)(a); inserted "The applicant shall pay to the depart-

ment a filing fee with the application" at the beginning of subsection (2)(a); reduced from 3% to 2% the percentage specified in subsection (2)(a) for cost up to one million dollars; increased from one tenth of 1% to one eighth of 1% the percentage specified in subsection (2)(a) for cost over \$300,000,000; added to the next to last sentence of subsection (2)(a) "with respect to the facility * * * in 70-803(3)(a), (d) and (e)"; added the last sentence of subsection (2)(a); added subsections (2)(b) and (2)(c); inserted "an application or" before "a certificate" near the beginning of subsection (6); added the last sentence of subsection (6); deleted former subsection (7) which read "The board may waive compliance with the time limit of this section if an applicant makes a clear and convincing showing that an immedi-

ate need for a facility exists and that the applicant did not have knowledge that the need existed sufficiently in advance of the need to file an application within the time provided in subsection (1) of this section"; deleted former subsection (8) which read "The board may, in its discretion, waive the necessity of filing an application where utility facilities are being relocated pursuant to sections 32-2414 through 32-2416, R. C. M. 1947, and where it is satisfied after an examination of the environmental impact statement filed pursuant to chapter 65 of Title 69, R. C. M. 1947, that such relocation will not significantly affect the environment"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment added subsection (7).

70-807. Study, evaluation and report on proposed facility—hearing on application for amendment of certificate—hearings. (1) Upon receipt of an application complying with section 70-806, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all the criteria listed in sections 70-810 and 70-816. Within two (2) years following receipt of an application for a facility as defined in subsections 70-803 (3)(a) and 70-803 (3)(d) and for a facility as defined in subsections 70-803 (3)(b) and (c) which is more than thirty (30) miles in length, and within one (1) year for a facility as defined in subsections 70-803 (3)(b) and (c) which is thirty (30) miles or less in length, the department shall make a report to the board, which shall contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and the final environmental impact statement. If the application is for a combination of two (2) or more facilities, the department shall make its report to the board within the greater of the lengths of time provided for in this subsection for either of the facilities.

(2) The departments of health and environmental sciences, highways, community affairs, fish and game, and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report.

(3) On an application for an amendment of a certificate, the board shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of the facility other than as provided in the alternates set forth in the application.

(4) Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a date for a hearing to begin

not more than one hundred twenty (120) days after the receipt; except for those hearings involving applications submitted for facilities as defined in section 70-803 (3)(b) and (3)(c), certification hearings shall be conducted by the board in the county seat of Lewis and Clark County or the county in which the facility, or the greater portion thereof, is to be located.

History: En. Sec. 7, Ch. 327, L. 1973; amd. Sec. 3, Ch. 268, L. 1974; amd. Sec. 39, Ch. 213, L. 1975; amd. Sec. 7, Ch. 494, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 213 and once by Ch. 494. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted references to Montana code section numbers for references to section numbers of the 1973 act.

Chapter 213, Laws of 1975, substituted "community affairs" for "intergovernmental relations" near the beginning of subsection (2).

Chapter 494, Laws of 1975, substituted "considering all the criteria listed in sec-

tions 70-810 and 70-816" at the end of the first sentence in subsection (1) for "pursuant to section 70-816 of this act"; substituted "Within two (2) years * * * thirty (30) miles or less in length" in the second sentence of subsection (1) for "Within six hundred (600) days following receipt of the application for a facility as defined in sections 70-803(3)(a), 70-803(b)(iv), 70-803(3)(c), 70-803(3)(d) and within one hundred eighty (180) days for a facility as defined in sections 70-803(b)(iii)"; added the last sentence of subsection (1); designated the former second paragraph of subsection (1) as subsection (2) and redesignated former subsections (2) and (3) as (3) and (4); inserted "or modifying" after "denying" in the second sentence of subsection (2); rewrote subsection (4) which read "Upon receipt of the department's report submitted under subsection (1) of this section, the board shall set a hearing date not more than sixty (60) days after such receipt"; and made minor changes in phraseology, punctuation and style.

70-808. Parties to certification proceeding—waiver by failure to participate. (1) The parties to a certification proceeding include:

- (a) the applicant;
 - (b) each municipality and government agency entitled to receive service of a copy of the application under subsection 70-806 (3);
 - (c) any person residing in a municipality entitled to receive service of a copy of the application under subsection 70-806 (4); any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other interested person; and
 - (d) the department.
- (2) Any party identified in subparagraphs (b) and (c) of subsection (1) of this section waives his right to be a party if he does not participate orally at the hearing before the board.

History: En. Sec. 8, Ch. 327, L. 1973; amd. Sec. 8, Ch. 494, L. 1975.

Amendments

The 1975 amendment added "before the board" to the end of subsection (2); and made minor changes in style.

70-809. Record of hearing—procedure—rules of evidence—burden of proof. (1) Any studies, investigations, reports, or other documentary

evidence, including those prepared by the department, which any party wishes the board to consider or which the board itself expects to utilize or rely upon, shall be made a part of the record; a record shall be made of the hearing and of all testimony taken; and the contested case procedures of the Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) shall apply to the hearing, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant or irrelevant testimony.

(2) In a certification proceeding held under this chapter, the applicant has the burden of showing by clear and convincing evidence that the application should be granted and that the criteria of section 70-810 are met.

(3) If the board appoints a hearing examiner to conduct any certification proceedings under this chapter, the hearing examiner may not be a member of the board or an employee of the department.

History: En. Sec. 9, Ch. 327, L. 1973; mer section as subsection (1); added subsections (2) and (3); and made minor changes in style.
Am. Sec. 9, Ch. 494, L. 1975.

Amendments

The 1975 amendment designated the for-

70-810. Decision of board—findings necessary for certificate—conditions imposed. (1) Within ninety (90) days after the last day of the hearing, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation or maintenance of the facility as the board considers appropriate. The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

- (a) the basis of the need for the facility;
- (b) the nature of the probable environmental impact;
- (c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;
- (d) each of the criteria listed in section 70-816;
- (e) in the case of an electric, gas, or liquid transmission line or aqueduct, what part, if any, of the line or aqueduct shall be located underground; that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and that the facility will serve the interests of utility system economy and reliability;
- (f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions;
- (g) that the facility will serve the public interest, convenience and necessity; and

(h) that duly authorized state air and water quality agencies have certified that the proposed facility will not violate state and federally established standards and implementation plans; the judgments of duly authorized air and water quality agencies are conclusive on all questions related to the satisfaction of state and federal air and water quality standards.

(2) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (1)(g) of this section, the board shall consider:

- (i) the items listed in subsections (1)(a) through (b) of this section;
- (ii) the benefits to the applicant and the state resulting from the proposed facility;
- (iii) the effects of the economic activity resulting from the proposed facility;
- (iv) the effects of the proposed facility on the public health, welfare, and safety;
- (v) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity, and demonstration thereof by the applicant, shall apply only to utility facilities.

History: En. Sec. 10, Ch. 327, L. 1973;
amd. Sec. 10, Ch. 494, L. 1975.

Amendments

The 1975 amendment inserted "within ninety (90) days after the last day of the hearing" at the beginning of the first sentence in subsection (1); deleted "utility" before "facility" near the end of the first

sentence in subsection (1); inserted "by the applicant" after "proposed" in the second sentence of subsection (1); deleted a former subsection (3) which read "A copy of the decision and any opinion issued with the decision shall be served upon each party"; added subsections (3) and (4); and made minor changes in phraseology and style.

70-811. Opinion issued with decision—contents of certificate—waiver of time requirements—facilities for which certificate required. (1) In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to subsection 70-810 (1)(f), it shall state in its opinion the reasons therefor.

(2) Any certificate issued by the board shall include the following:

(a) An environmental evaluation statement related to the facility being certified. The statement shall include, but not be limited to, analysis of the following information:

- (i) the environmental impact of the proposed facility;
- (ii) any adverse environmental effects which cannot be avoided by issuance of the certificate;

(iii) problems and objections raised by other federal and state agencies and interested groups;

(iv) alternatives to the proposed facility; and

(v) a plan for monitoring environmental effects of the proposed facility.

(b) A statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(3) Any of the provisions described in sections 70-807 through 70-811 may be waived by the board, for good cause shown, with respect to applications filed before January 1, 1975. Applications for certificates under this subsection must be promptly filed.

(4) (a) The board may waive compliance with any of the provisions of sections 70-807 through 70-811 if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of sections 70-807 through 70-811.

(b) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a utility or person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood or other natural disaster or as the result of insurrection, war or other civil disorder, and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

History: En. Sec. 11, Ch. 327, L. 1973; amd. Sec. 11, Ch. 494, L. 1975.

Amendments

The 1975 amendment deleted "The time requirement of section 6 and" from the beginning of subsection (3); deleted the last two sentences of subsection (3) which read "A certificate is not required under

this act for facilities under construction or in operation on January 1, 1973. However, a certificate must be obtained for associated facilities upon which construction has not commenced before January 1, 1973, subject to the waiver provisions of this subsection"; added subsection (4); and made minor changes in phraseology, punctuation and style.

70-812. Judicial review of board decision. Any party as defined in section 70-808 aggrieved by the final decision of the board on an application for a certificate may obtain judicial review of that decision by the filing of a petition in a state district court of competent jurisdiction.

The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

History: En. Sec. 12, Ch. 327, L. 1973; amd. Sec. 12, Ch. 494, L. 1975.

Amendments

The 1975 amendment deleted "within thirty days after the issuance of such final decision" from the end of the first sentence of the first paragraph; deleted the last two sentences of the first paragraph which read "Upon receipt of such petition, the department shall deliver to the court a copy of the written transcript of the record of the proceedings before it and a

copy of the board's decision and opinion entered therein which shall constitute the record on judicial review. A copy of such transcript, decision and opinion shall remain on file with the department and shall be available for public inspection"; deleted the first sentence of the second paragraph which read "If a decision is issued after a hearing on an application for a certificate, such decision is final for purposes of judicial review"; and made minor changes in phraseology, punctuation and style.

70-813. Jurisdiction of courts restricted. Except as expressly set forth in sections 70-812, 70-817, and 70-821, no court of this state has jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the board under this chapter or to stop or delay the construction, operation or maintenance of a facility, except to enforce compliance with this chapter or the provisions of a certificate issued hereunder pursuant to sections 70-819 or 70-821.

History: En. Sec. 13, Ch. 327, L. 1973; ter" for "act"; deleted "utility" before amd. Sec. 13, Ch. 494, L. 1975. "facility"; and made minor changes in phraseology and style.

Amendments

The 1975 amendment substituted "chap-

70-814. Annual long-range plan submitted—contents—available to public. (1) Each utility, and each person contemplating the construction of a facility within this state in the ensuing ten (10) years, shall furnish annually to the department for its review, a long-range plan for the construction and operation of facilities. The plan shall be submitted on April 1 of each year, and shall include the following:

(a) the general location, size and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing ten (10) years, as well as those facilities to be removed from service during the planning period;

(b) in the case of utility facilities a description of efforts by the utility or person to co-ordinate the plan with other utilities or persons so as to provide a co-ordinated regional plan for meeting the energy needs of the region;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections, and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(2) The plan shall be made available to the public by the department, and the utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of highways, the department of public service regulation, the department of state lands and the department of community affairs. Citizen environmental protection and resource planning groups, and other interested persons may obtain a plan by written request and payment therefor to the department.

History: En. Sec. 14, Ch. 327, L. 1973; amd. Sec. 40, Ch. 213, L. 1975; amd. Sec. 14, Ch. 494, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 213 and once by Ch. 494.

Neither amendatory act mentioned or included the changes made by the other. Since there appears to be no conflict between them, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 213, Laws of 1975, substituted "department of community affairs" for "department of intergovernmental relations." in subsection (2).

Chapter 494, Laws of 1975, inserted "and each person contemplating the construction of a facility within this state in the ensuing

ten years" near the beginning of subsection (1); deleted "utility" before "facility" at the end of the first sentence in subsection (1); inserted "or person" after "utility" throughout the section; inserted "in the case of utility facilities" at the beginning of subdivision (1)(b); substituted "energy needs" for "utility needs" at the end of subsection (1)(b); inserted "board by rule or" before "the department" in subdivision (1)(e); substituted "chapter" for "act" in subdivision (1)(e); added "to the department" at the end of subsection (2); and made minor changes in phraseology, punctuation and style.

70-815. Study of planned facilities included in annual long-range report. If a utility or person lists and identifies a proposed facility in its plan, submitted pursuant to section 70-814, as one on which construction is proposed to be commenced within the five (5) year period following submission of the plan, the department shall commence examination and evaluation of the proposed site to determine whether construction of the proposed facility would unduly impair the environmental values in section 70-816. This study may be continued until such time as a person files an application for a certificate under section 70-806. Information gathered under this section may be used to support findings and recommendations required for issuance of a certificate.

History: En. Sec. 15, Ch. 327, L. 1973; amd. Sec. 15, Ch. 494, L. 1975.

Amendments

The 1975 amendment inserted "or person" after "utility" at the beginning of

the section; deleted "utility" before "facility" in the first sentence; inserted "proposed" before "site" near the middle of the first sentence; substituted "person" for "utility" in the second sentence; and made minor changes in phraseology and style.

70-816. Environmental factors considered in evaluating long-range plans. In evaluating long-range plans, conducting five-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors and may, by rule, add to the categories of this section:

- (1) Energy needs.
- (a) Growth in demand and projections of need.
- (b) Availability and desirability of alternative sources of energy.
- (c) Availability and desirability of alternative sources of energy in lieu of the proposed facility.
- (d) Promotional activities of the utility which may have given rise to the need for this facility.
- (e) Socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality.
- (f) Conservation activities which could reduce the need for more energy.
- (g) Research activities of the utility of new technology available to it which might minimize environmental impact.
- (2) Land-use impacts.
- (a) Area of land required and ultimate use.

- (b) Consistency with area-wide state and regional land-use plans.
- (c) Consistency with existing and projected nearby land use.
- (d) Alternative uses of the site.
- (e) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal.
- (f) Geologic suitability of the site or route.
- (g) Seismologic characteristics.
- (h) Construction practices.
- (i) Extent of erosion, scouring, wasting of land—both at site and as a result of fossil fuel demands of the facility.
- (j) Corridor design and construction precautions for transmission lines or aqueducts.
- (k) Scenic impacts.
- (l) Effects on natural systems, wildlife, plant life.
- (m) Impacts on important historic architectural, archeological, and cultural areas and features.
- (n) Extent of recreation opportunities and related compatible uses.
- (o) Public recreation plan for the project.
- (p) Public facilities and accommodation.
- (q) Opportunities for joint use with energy intensive industries, or other activities to utilize the waste heat from facilities.
- (3) Water resources impacts.
 - (a) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes and reservoirs.
 - (b) Hydrologic studies of impact of facilities on ground water.
 - (c) Cooling system evaluation including consideration of alternatives.
 - (d) Inventory of effluents including physical, chemical, biological, and radiological characteristics.
 - (e) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials, and effect of discharge on bottom sediments.
 - (f) Relationship to water quality standards.
 - (g) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights.
 - (h) Effects on plant and animal life, including algae, macroinvertebrates, and fish population.
 - (i) Effects on unique or otherwise significant ecosystems; e.g., wetlands.
 - (j) Monitoring programs.
- (4) Air quality impacts.
 - (a) Meteorology. Wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion.
 - (b) Topography. Factors affecting dispersion.

- (c) Standards in effect and projected for emissions, design capability to meet standards.
- (d) Emissions and controls.
 - (i) Stack design.
 - (ii) Particulates.
 - (iii) Sulfur Oxides.
 - (iv) Oxides of Nitrogen.
 - (v) Heavy metals, trace elements, radioactive materials and other toxic substances.
- (e) Relationship to present and projected air quality of the area.
- (f) Monitoring program.
- (5) Solid wastes impact.
 - (a) Solid waste inventory.
 - (b) Disposal program.
- (c) Relationship of disposal practices to environmental quality criteria.
- (d) Capacity of disposal sites to accept projected waste loadings.
- (6) Radiation impacts.
 - (a) Land-use controls over development and population.
 - (b) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes.
- (c) Analyses and studies of the adequacy of engineering safeguards and operating procedures.
- (d) Monitoring. Adequacy of devices and sampling techniques.
- (7) Noise impacts.
 - (a) Construction period levels.
 - (b) Operational levels.
- (c) Relationship of present and projected noise levels to existing and potential stricter noise standards.
- (d) Monitoring. Adequacy of devices and methods.

History: En. Sec. 16, Ch. 327, L. 1973;
amd. Sec. 16, Ch. 494, L. 1975.

Amendments

The 1975 amendment deleted "of site

and facility" after "certificates" in the introductory paragraph; and substituted "by rule" for "by regulation" near the end of the introductory paragraph.

70-817. Additional requirements by other governmental agencies not permitted after issuance of certificate—exceptions. Notwithstanding any other law, no state or regional agency, or municipality or other local government, may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a facility authorized by a certificate issued pursuant to this chapter; except that the state air and water quality agency or agencies shall retain authority which they have or may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans for air and water quality and to enforce those standards. This chapter does not prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of a facility.

History: En. Sec. 17, Ch. 327, L. 1973;
amd. Sec. 17, Ch. 494, L. 1975.

Amendments

The 1975 amendment deleted "utility" before "facility" near the middle of the

first sentence; substituted "this chapter" for "the provisions of this act"; substituted "chapter" for "act" in the last sentence; and made minor changes in phraseology and punctuation.

70-818. Revocation or suspension of certificate—voiding of application.

(1) A certificate may be revoked or suspended by the board:

(a) for any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the board's refusal to grant a certificate; or

(b) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(c) for violation of any provision of this chapter, the rules issued thereunder, or orders of the board or department.

(2) An application may be voided by the department:

(a) for any material and knowingly false statement in the application or in accompanying statements or studies required of the applicant;

(b) for failure to file an application in substantially the form and content required by this chapter and the rules adopted thereunder; or

(c) for failure to deposit the filing fee with the application as required by section 70-806.

History: En. Sec. 18, Ch. 327, L. 1973; amd. Sec. 18, Ch. 494, L. 1975.

Amendments

The 1975 amendment designated the former introductory phrase as subsection (1); redesignated former subdivisions (1) to (3) as subdivisions (1)(a) to (1)(c);

added "by the board" at the end of the introductory phrase of subsection (1); substituted "chapter" for "act" in subdivision (1)(c); substituted "rules" for "regulations" in subdivision (1)(c); added subsection (2); and made minor changes in phraseology.

70-819. Enforcement of chapter by residents of state—statement of failure to enforce act—mandamus—private suits for damages. (1) A resident of this state, with knowledge that a requirement of this chapter or a rule adopted under it is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark. If the court finds that a requirement of this chapter or a rule adopted under it is not being enforced, the court may order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from a surface or underground source may sue a person to

recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from the operation of a facility. The remedies enumerated in this subsection do not exclude the use of any other remedy which may be available under the laws of the state.

History: En. Sec. 19, Ch. 327, L. 1973; substituted "a person" for "a utility" in the first sentence in subsection (3); deleted "utility" before "facility" at the end of the first sentence in subsection (3); added the second sentence of subsection (3); and made minor changes in phraseology.

Amendments

The 1975 amendment substituted "chapter" for "act" throughout the section; sub-

70-820. Adoption of rules—monitoring of facilities. (1) The board may adopt rules implementing the provisions of this chapter, including, but not limited to, rules:

- (a) governing the form and content of applications;
- (b) further defining the terms used in this chapter;
- (c) governing the form and content of long-range plans;
- (d) any other rules the board considers necessary to accomplish the purposes and objectives of this chapter.

(2) The board and the department shall monitor the operations of all certificated facilities, for assuring continuing compliance with this chapter and certificates issued hereunder, and for discovering and preventing non-compliance with this chapter and the certificates.

(3) The board shall adopt rules requiring every person who proposes to gather geological data by boring of test holes or other underground exploration, investigation, or experimentation, related to the possible future development of a facility employing geothermal resources, to comply with the following requirements:

- (a) Notify the department of the proposed action;
- (b) Submit to the department a description of the area involved;
- (c) Submit to the department a statement of the proposed activities to be conducted and the methods to be utilized;
- (d) Submit to the department geological data reports at such times as may be required by the rules; and
- (e) Submit such other information as the board may require in the rules.

History: En. Sec. 20, Ch. 327, L. 1973; The 1975 amendment substituted "chapter" for "act" throughout the section; added subdivisions (1)(a) to (1)(d); deleted "underground utility" before "facility" in subsection (3); and made minor changes in phraseology.

Amendments

The 1974 amendment added subsection (3).

70-821. Penalties for violation of chapter—civil action by attorney general. (1) Whoever

(a) without first obtaining a certificate required under section 70-804, or a waiver thereof under section 70-811 (4)(b) commences to construct or operate a facility; or

(b) having first obtained a certificate, constructs, operates or maintains a facility other than in compliance with the certificate; or

(c) violates any other provision of this chapter or any rule or order adopted thereunder, or knowingly submits false information in any report or application required by this chapter or rule or order adopted thereunder; or

(d) causes any of the aforementioned acts to occur; shall be liable to a civil penalty of not more than ten thousand dollars (\$10,000) for each violation. Each day of a continuing violation shall constitute a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the first district court of Montana.

(2) Whoever knowingly and willfully violates subsection (1) shall be fined not more than ten thousand dollars (\$10,000) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(3) In addition to any penalty provided in subsection (1) or (2), whenever the department determines that a person is violating or is about to violate any of the provisions of this section, it may refer the matter to the attorney general who may bring a civil action on behalf of the state in the first district court of Montana for injunctive or other appropriate relief against the violation and to enforce this chapter or a certificate issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond. The department shall also enforce this chapter and bring legal actions to accomplish the enforcement through its own legal counsel.

(4) All fines and penalties collected shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter.

History: En. Sec. 21, Ch. 327, L. 1973; amd. Sec. 2, Ch. 270, L. 1975; amd. Sec. 21, Ch. 494, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 270 and once by Ch. 494. Neither amendatory act mentioned or included the changes made by the other. Since there appears to be no conflict between the amendments, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 270, Laws of 1975, inserted "and penalties" after "fines" in subsection (4); and substituted "ear-marked revenue fund for the use of the department in ad-

ministering this chapter" for "state general fund" at the end of subsection (4).

Chapter 494, Laws of 1975, deleted "of site and facility" after "certificate" in subdivisions (1)(a) and (b); inserted "or a waiver thereof under section 70-811(4) (b)" in subdivision (1)(a); deleted "utility" before "facility" in subdivisions (1)(a) and (b); deleted "after the effective date of this act" at the end of subdivision (1)(a); inserted subdivision (1)(c); redesignated former subdivision (1)(c) as (1)(d); substituted "it may refer the matter" for "it shall refer the matter" in subsection (3); substituted "this chapter" for "the act" in subsection (3); added the last sentence of subsection (3); and made minor changes in phraseology and style.

70-822. Grants, gifts and funds. The department may receive grants, gifts and other funds from any public or private source, to assist in its activities under this chapter.

History: En. Sec. 22, Ch. 327, L. 1973; amd. Sec. 22, Ch. 494, L. 1975.

Amendments

The 1975 amendment substituted "may

receive" for "shall have authority to receive"; and substituted "chapter" for "act."

70-823. Chapter supersedes other laws or regulations. This chapter supersedes other laws or regulations. If any provision of this chapter is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control, and the other law, rule or regulation shall be deemed superseded for the purpose of this chapter.

History: En. Sec. 23, Ch. 327, L. 1973; amd. Sec. 23, Ch. 494, L. 1975.

Compiler's Notes

Section 24 of Ch. 494, Laws 1975 read "The amendments made by this act, or proposed to be made if this act should not be enacted, do not indicate an expression of legislative intent as to the interpretation of any provision of the Montana Utility Siting Act of 1973 as it existed prior to the introduction or enactment of this act. This act shall not affect the outcome of any judicial or quasi-judicial administrative proceeding commenced prior to the effective date of this act."

Section 25 of Ch. 494, Laws 1975 read "The amendments made by this act apply only to applications received by the department after January 1, 1975. Persons required to file long-range plans under the amendments made by section 14 of this act to section 70-814, R. C. M. 1947, shall have until June 1, 1975, to file such plans."

70-824. Earmarked revenue fund. All fees, taxes, fines, and penalties collected under this chapter shall be deposited in the earmarked revenue fund for use by the department in carrying out its functions and responsibilities under this chapter.

History: En. 70-824 by Sec. 3, Ch. 270, L. 1975.

Title of Act

An act amending sections 70-806 and 70-

Amendments

The 1975 amendment substituted "chapter" for "act" throughout the section; and made a minor change in phraseology.

Separability Clause

Section 24 of Ch. 327, Laws 1973 read "If any provision of this act, or its application to any person is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected."

Effective Dates

Section 25 of Ch. 327, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 16, 1973.

Section 26 of Ch. 494, Laws of 1975 provided the act should be in effect from and after its passage and approval. Approved April 21, 1975.

821, R. C. M. 1947, providing that all fees, fines, and penalties paid under the Montana Utility Siting Act of 1973 be deposited in the earmarked revenue fund.

70-825. Statement of legislative findings and policy. The legislature, noting the apparent federal initiative for energy conversion facilities and further noting their complex economic, social and environmental impacts as well as the lack of clearly defined state energy conversion objectives, policies, and plans, finds that energy conversion facility siting must be restrained until such state objectives, policies, and plans are defined, developed, and subjected to citizen participation and review. The legislature further finds that action on individual utility siting applications without a comprehensive program could lead to economic, social, and environmental disruption in their cumulative impact. The legislature pursuant to its mandate and authority under article IX of the Montana constitution declares that it is the policy of this state that until a comprehensive state energy conversion policy and plan is developed and accepted, the siting of certain energy conversion facilities shall be suspended.

History: En. 70-825 by Sec. 1, Ch. 517, L. 1975.

Title of Act

An act providing for the suspension of action on certain applications for certifi-

cates of environmental compatibility and public need during which time a comprehensive Montana energy policy and plan shall be formulated; and providing for an immediate effective date.

70-826. Definitions. Unless the context clearly requires otherwise, in this act:

(1) "Board" means the board of natural resources and conservation.

(2) "Application" means an application for a certificate of environmental compatibility and public need under the Montana Utility Siting Act of 1973 for only a utility facility:

(a) designated for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(b) designed for, or capable of, producing one hundred million (100,000,000) cubic feet of gas per day or more, or any addition thereto, having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(c) designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of two hundred fifty thousand dollars (\$250,000), or

(d) designed for or capable of enriching uranium minerals.

(3) "Department" means the department of natural resources and conservation.

(4) "Certificate" means certificate of environmental compatibility and public need.

History: En. 70-826 by Sec. 2, Ch. 517, L. 1975.

70-827. Suspension of action. (1) Once the next board has granted a certificate for a utility facility as described in section 70-826 the department shall not accept or act upon any application until:

(a) the governor of the state of Montana has prepared and submitted directly to the next legislature a long-term, comprehensive state energy conversion policy and plan including but not limited to alternative long-term growth goals, a state-wide siting inventory, and a proposed siting policy for the co-ordinated siting of energy conversion facilities to meet Montana's energy needs,

(b) the next legislature of the state of Montana has had an opportunity to respond to the policy and plan with appropriate legislation.

(2) Provided that this act does not apply to any application accepted by the department prior to passage and approval of this act.

History: En. 70-827 by Sec. 3, Ch. 517, L. 1975.

70-828. Other application suspensions. The board may suspend action on applications not meeting the definition of application in section 70-826 if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that the cumulative impact of those applications, if granted, would be contrary to the policies and purposes of this act.

History: En. 70-828 by Sec. 4, Ch. 517, L. 1975.

70-829. Positive action allowed. The board may take action on applications meeting the definition of application in section 70-826 if it determines, after a public hearing conducted under the contested case procedures of the Montana Administrative Procedure Act, that (1) the facility is required to meet state energy needs, or (2) upon a clear and convincing showing by the applicant the burden imposed on interstate commerce outweighs the adverse impacts of the proposed facility on the public health, safety, general welfare and environment of the state of Montana.

History: En. 70-829 by Sec. 5, Ch. 517, L. 1975.

the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 6 of Ch. 517, Laws 1975 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications,

Effective Date

Section 7 of Ch. 517, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 29, 1975.

TITLE 71—PUBLIC WELFARE AND RELIEF

Chapter

1. County poor, 71-106, 71-113, 71-120.
2. State department of social and rehabilitation services—county departments of public welfare, 71-201.1, 71-207, 71-210 to 71-210.5, 71-211 to 71-214, 71-216 to 71-218, 71-221 to 71-223, 71-226, 71-228 to 71-230, 71-231.4, 71-233.1 to 71-233.4, 71-235, 71-236, 71-241.1, 71-246.1, 71-247.
3. General relief, 71-302.2, 71-303, 71-305 to 71-308, 71-311, 71-314.
5. Aid to dependent children, 71-501, 71-508, 71-509, 71-511.
7. Child welfare, 71-708 to 71-710.
9. Public Welfare Act part 8—appropriations, disposition of funds and disbursements, 71-901.
10. Public Welfare Act part 9—to provide for payments to persons having silicosis, 71-1001 to 71-1008, 71-1010, 71-1010.1.
11. Sale of real property held by public welfare department, Repealed—Section 52, Chapter 121, Laws of 1974.
12. Permanently and totally disabled persons in need, Repealed—Section 1, Chapter 210, Laws of 1974.
13. Privileges of blind and physically disabled persons, 71-1305, 71-1305.1, 71-1306, 71-1307, 71-1309.
14. Services to the blind, 71-1401, 71-1404, 71-1407.
15. Medical assistance, 71-1516, 71-1517, 71-1520, 71-1524.
18. Subsidiary Adoption Act of 1977, 71-1806 to 71-1812.
19. Protective services for developmentally disabled, 71-1901 to 71-1919.
20. Community homes for developmentally disabled, 71-2001 to 71-2007.
21. Vocational rehabilitation and education, 71-2101 to 71-2108.
22. Veterans' welfare, 71-2201 to 71-2207.
23. Problems of aging, 71-2301 to 71-2307.
24. Community based services for developmentally disabled, 71-2401 to 71-2414.
25. Treatment of chronic renal disease, 71-2501, 71-2502.
26. Crime Victims Compensation Act, 71-2601 to 71-2625.

CHAPTER 1—COUNTY POOR

Section

- 71-106. Support of poor and indigent persons—tax levy.
71-113. Bond of contractor—duty of physician to examine and notify contractor.
71-120. Burial allowance for military servicemen and servicewomen.

71-101. (4521) Repealed.

Repeal

Section 71-101 (Sees. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 1, p. 51, L. 1876; Sec. 1, Ch. 73, L. 1957), relating

to superintendence of the poor by the board of county commissioners, was repealed by Sec. 53, Ch. 37, Laws 1977.

71-106 (4465.4) Support of poor and indigent persons—tax levy. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually a tax on property not exceeding thirteen and one-half (13½) mills, which levy

shall be made at the time other tax levies are made on property, as provided by law.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967; amd. Sec. 2, Ch. 279, L. 1974. See history of Sec. 16-1001.

Amendments

The 1974 amendment reduced the maximum tax from seventeen to thirteen and one-half mills.

Repealing Clause

Section 3 of Ch. 279, Laws 1974 read "Sections 71-1519 and 71-1522, R. C. M. 1947, are repealed."

Effective Date

Section 4 of Ch. 279, Laws 1974 read "This act shall become effective July 1, 1974."

71-107. (4465.5) Repealed.

Repeal

Section 71-107 (Subd. 6, Sec. 1, Ch. 100, L. 1931), relating to county farms for the

support of the poor, was repealed by Sec. 53, Ch. 37, Laws 1977.

71-113. (4529) Bond of contractor—duty of physician to examine and notify contractor. A person with whom a contract for the maintenance or medical attendance of the poor or indigent sick is made must execute a bond to the state in a sum not less than \$1,000 or more than \$5,000, with two or more sureties, conditioned for the faithful performance of his contract. The bond is to be approved by and filed with the chairman of the board. The physician with whom a contract for medical attendance is made shall each week examine any person who is a charge upon the county, and if after the examination he is satisfied that the person is able to support and maintain himself, he must notify the contractor having the person in charge by leaving with the contractor a notice of the fact that the person requires no further medical attendance. He shall file a duplicate notice with the clerk of the board. After the physician serves the notice and files the duplicate with the clerk, the person mentioned therein ceases to be a charge upon the county.

History: Ap. p. Secs. 1, 2, and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2, and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. 4529, R. C. M. 1921; amd. Sec. 11, Ch. 37, L. 1977.

Amendments

The 1977 amendment inserted "for the maintenance or medical attendance of the poor or indigent sick" in the first sentence; and made minor changes in phraseology, punctuation and style.

71-114. (4530) Repealed.

Repeal

Section 71-114 (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.), relating to county's duties in care of the illness or

death of a nonresident of the county, was repealed by Sec. 3, Ch. 225, Laws of 1974.

71-116, 71-117. (4532, 4533) Repealed.

Repeal

Sections 76-116 and 76-117 (Ap. p. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 2, Ch. 91, L. 1931; Secs. 2, 3, Ch. 19, Ex. L. 1933), relating to a county's

payment for moving an applicant for care to the county of his residence and the provision of temporary relief to a non-resident, were repealed by Sec. 3, Ch. 225, Laws of 1974.

71-118. (4534) Repealed.**Repeal**

Section 71-118 (Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; Sec. 14, p. 55, L. 1876; Sec. 2, Ch. 73, L. 1957), relating to

purchase and maintenance of a county farm, was repealed by Sec. 53, Ch. 37, Laws 1977.

71-120. (4536) Burial allowance for military servicemen and service-women. (1) The board of commissioners of each county in this state shall designate a person in the county, preferably an honorably discharged serviceman or servicewoman, as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any serviceman or servicewoman who is a resident of the state of Montana and either:

(a) served in any branch of the armed services of the United States, was honorably discharged, and may hereafter die;

(b) is now serving and dies while so serving;

(c) died while in service during any declared or undeclared war or

(d) is a resident of the Montana veterans' home at time of death.

(3) Such burial shall not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed \$250 to defer burial expense shall be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death.

(5) The benefits hereof are not available in the case of any decedent whose executor, administrator, or heirs waive the benefits.

(6) Whenever burial is of a resident of the Montana veterans' home, a sum not to exceed \$250 to defer burial expenses shall be paid by the county commissioners of the county in which the deceased person resided prior to admittance to the Montana veterans' home.

(7) If a person qualified under subsection (2)(a) dies while temporarily absent from the state or county of residence, the provisions of this section apply and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided.

(8) Whenever a person qualified under subsection (2)(a) dies at any public institution of the state of Montana, other than the Montana veterans' home, and burial for any cause is not made in the county of the former residence of the deceased, the officers of the state institution shall provide the proper burial herein prescribed. The reimbursement for the expense of each burial may not exceed \$250. The expense shall be paid by the county in which the decedent resided at the time of entry into such institution.

(9) No such burial may be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment.

History: En. Sec. 1, Ch. 39, L. 1903; re-en. Sec. 2065, Rev. C. 1907; amd. Sec. 1, Ch. 89, L. 1909; amd. Sec. 1, Ch. 109, L. 1911; amd. Sec. 1, Ch. 178, L. 1919; amd. Sec. 1, Ch. 194, L. 1921; re-en. Sec. 4536, R. C. M. 1921; amd. Sec. 1, Ch. 181, L.

1931; amd. Sec. 1, Ch. 163, L. 1937; amd. Sec. 1, Ch. 52, L. 1939; amd. Sec. 1, Ch. 25, L. 1945; amd. Sec. 1, Ch. 310, L. 1967; amd. Sec. 1, Ch. 96, L. 1969; amd. Sec. 34, Ch. 535, L. 1975; amd. Sec. 2, Ch. 49, L. 1977.

Amendments

The 1975 amendment deleted "female" before "resident of the Montana veterans' home" near the end of subsection (1) and near the beginning of subsection (4); deleted "her" before "admittance" in subsection (4); and deleted "his" before "residence" in subsection (5).

The 1977 amendment divided former subsection (1) into subsections (1) through (3); inserted "is a resident of the state of Montana and either" in the introductory phrase of subsection (2); inserted subdivi-

sion (2)(b); redesignated former subsections (2) through (5) as subsections (4) through (7); divided former subsection (6) into subsections (8) and (9); inserted references to person qualified under subsection (2)(a) for references to death of honorably discharged person, male or female, who shall have served in the armed forces of the United States, and who is a resident of Montana, in subsections (7) and (8); and made numerous minor changes in phraseology, punctuation and style.

CHAPTER 2—STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES—COUNTY DEPARTMENTS OF PUBLIC WELFARE

Section**71-201.1. Definition.**

71-207. Attorney general to act as legal adviser to department.

71-210. Powers and duties of state department.

71-210.1. Public assistance personnel.

71-210.2. Authority to provide supplementary payments from state funds.

71-210.3. Rules and regulations concerning supplementary payments.

71-210.4. Social services fees.

71-210.5. Fees earmarked.

71-211. State department to act as agency of federal government—assistance to ward Indians.

71-212. Power of state department in administering state grants-in-aid.

71-213. County departments to be established.

71-214. County commissioners ex officio county welfare board—compensation.

71-216. Powers and duties of the county board.

71-217. Staff personnel—how selected, paid, and controlled—dismissal.

71-218. Department—functions.

71-221. Functions and activities of the county department.

71-222. County to levy taxes, budget, and make expenditures for public assistance activities.

71-223. Right of appeal.

71-226. Fraudulent acts.

71-228. Revocation of assistance.

71-229. Assistance not assignable nor subject to legal process.

71-230. Method of issuing assistance grants—reimbursement.

71-231.4. Audit of public assistance records.

71-233.1. Investigations and enforcement actions by department of revenue.

71-233.2. Co-operation of governmental agencies with department of revenue.

71-233.3. Information made available to department of revenue.

71-233.4. Nondisclosure of information resulting from investigation—violation of disclosure provisions by employees.

71-235. Living relatives—jointly and severally liable—scale of contribution.

71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return.

71-241.1. Subrogation and third party liability.

71-246.1. Liens released.

71-247. Recovery from the estate of a decedent—claim for assistance paid.

71-201. Repealed.**Repeal**

Section 71-201 (Sec. 1, Part 1, Ch. 82, L. 1937), relating to creation of the de-

partment of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-201.1. Definition. Unless the context requires otherwise, in Title 71:

(1) "State department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19.

(2) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: En. 71-201.1 by Sec. 19, Ch. 121, L. 1974.

revision of the laws relating to the department of social and rehabilitation services.

Title of Act

An act for the codification and general

71-202 to 71-206. Repealed.

Repeal

Sections 71-202 to 71-206 (Sec. 2, Subds. (a) to (e), Sec. 3, Part 1, Ch. 82, L. 1937; Sec. 1, Ch. 129, L. 1939; Sec. 1, Ch. 117, L. 1941; Sec. 1, Ch. 199, L. 1951; Sec. 1, Ch. 26, L. 1953; Sec. 1, Ch. 117, L. 1957; Secs. 29, 30, Ch. 177, L. 1965;

Sec. 1, Ch. 101, L. 1967; Sec. 4, Ch. 237, L. 1967; Sec. 19, Ch. 249, L. 1967), relating to the creation, powers and duties of the state board of public welfare, were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-207. Attorney general to act as legal adviser to department. The attorney general of the state shall act as legal adviser to the state department, shall perform such legal services as may be required, and may employ such other and additional counsel as may be necessary for this purpose and fix the compensation therefor. The total yearly sum for the service may not exceed \$2,400, which compensation shall be paid out of state public assistance funds.

History: En. Sec. 4, Part 1, Ch. 82, L. 1937; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 12, Ch. 37, L. 1977.

department" for "state department of welfare."

The 1977 amendment substituted "public assistance funds" for "public welfare funds" at the end of the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment substituted "state

71-208, 71-209. Repealed.

Repeal

Sections 71-208 and 71-209 (Secs. 5, 6, Part 1, Ch. 82, L. 1937; Sec. 2, Ch. 129, L. 1939; Sec. 2, Ch. 117, L. 1941; Sec. 1, Ch. 255, L. 1965; Sec. 30, Ch. 93, L. 1969),

relating to divisions within the state department of public welfare and powers and duties of the administrator were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-210. Powers and duties of state department. (1) The state department shall:

(a) administer or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) administer or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected, and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(c) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location

of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(f) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes; and

(g) administer and supervise all federal funds allocated to this state and all state funds appropriated to the state department for public assistance activities. The state department shall do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes.

(2) The state department may:

(a) purchase, exchange, condemn, or receive by gift, either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the state department.

(b) contract with the federal government to carry out its public assistance functions. The state department may do all things necessary in order to avail itself of federal aid and assistance.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957; amd. Sec. 20, Ch. 121, L. 1974; amd. Sec. 13, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "Title 71" for "this act" in the first sentence of subsection (1); substituted subdivision (1)(e) for "Provide services to county governments in respect to organization and supervision of county welfare departments for efficiency and economy in the administration of public welfare functions"; deleted former subdivision (1)(f) relating to salaries, appointments, educational leaves and staff development needs (see parent volume); added subdivision (1)(g) and subsection (2); and

made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted the former first sentence of subsection (1) reading "The state department has authority over and administration or supervision of all the purposes and operations as set forth under Title 71"; substituted "public assistance functions" for "public welfare functions" in subdivision (1)(e); substituted "public assistance purposes" for "the purposes of this act" in subdivision (1)(f); substituted "public assistance activities" for "activities set forth in Title 71" in the first sentence of subdivision (1)(g); substituted references to public assistance functions and purposes for references to purposes and functions set forth in Title 71 in subdivisions (1)(g), (2)(a), and (2)(b); and made minor changes in phraseology, punctuation and style.

71-210.1. Public assistance personnel. The state department shall (1) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel. The state department shall have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment. Personnel standards shall conform as far as possible with general standards established or required by the federal government.

(2) Develop policies relating to educational leave of employees, and to staff development needs.

(3) Supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system. All public assistance personnel shall be residents of this state, unless it is impossible to find residents of this state possessing qualifications required by the merit system. If possible, county assistance personnel shall be residents of the county in which they work.

History: En. 71-210.1 by Sec. 21, Ch. 121, L. 1974.

71-210.2. Authority to provide supplementary payments from state funds. The department of social and rehabilitation services shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind or disabled under Title XVI of the social security act of the United States, or any future amendments thereto.

History: En. 71-210.1 by Sec. 1, Ch. 358, L. 1974.

Title of Act

An act to authorize the department of social and rehabilitation services to pro-

vide supplementary assistance to recipients of supplemental security income under Title XVI of the Social Security Act of the United States; and providing an effective date.

71-210.3. Rules and regulations concerning supplementary payments. The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

History: En. 71-210.2 by Sec. 2, Ch. 358, L. 1974.

Effective Date

Section 3 of Ch. 358, Laws 1974 pro-

vided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

71-210.4. Social services fees. The state department of social and rehabilitation services is hereby authorized to establish and collect fees for social services furnished which are authorized pursuant to Title XX of the Social Security Act, Public Law 93-641. Such fees shall be based on a schedule determined by the department.

History: En. 71-210.4 by Sec. 1, Ch. 206, L. 1975.

Title of Act

An act to provide for the collection of

fees by the department of social and rehabilitation services, and requiring deposit of such fees in the earmarked revenue fund.

71-210.5. Fees earmarked. The state share of fees provided for by section 71-210.4 shall be paid over to the state treasurer for the credit of the earmarked revenue fund for the use of the state department of social and rehabilitation services in providing social services.

History: En. 71-210.5 by Sec. 2, Ch. 206, L. 1975.

71-211. State department to act as agency of federal government—assistance to ward Indians. (1) The state department shall act as the agent of the federal government in public assistance matters of mutual concern in conformity with this act and the federal Social Security Act and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

(2) The counties shall not be required to reimburse the state department for any portion of old-age assistance, medical assistance, aid to needy dependent children, aid to needy blind, or aid to the totally disabled paid to ward Indians or for any payment on behalf of any person in a state-operated medical institution. The federal government may reimburse the state of Montana in behalf of counties providing general relief to ward Indians a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status. A "ward Indian" is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the federal Social Security Act is amended to define a "ward Indian", such definition shall supersede the foregoing definition.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; substituted "public assistance matters" for "public welfare matters" in subsection (1); and made minor changes in phraseology, punctuation and style.

71-212. Power of state department in administering state grants-in-aid. In administering or supervising any state or federal funds appropriated or made available to the state department for public assistance purposes, the state department shall have the authority to:

(1) require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public assistance as is fixed by law relating to such assistance;

(2) make use of all legal processes to enforce the minimum standards prescribed by the state department under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law; and

(3) require that each part of the public assistance laws shall be in effect in all counties of the state.

History: En. Sec. 8, Part 1, Ch. 82, L. 1937; amd. Sec. 15, Ch. 37, L. 1977.

Amendments

The 1977 amendment substituted "public assistance purposes" for "public welfare

purposes" in the first paragraph; redesignated subdivisions (a) to (c) as subdivisions (1) to (3); substituted "the public assistance laws" for "this act" in subdivision (3); and made minor changes in phraseology, punctuation and style.

71-213. County departments to be established. There shall be established in each county of the state a county department of public welfare which shall consist of a county board of public welfare and such staff per-

sonnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit.

History: En. Subd. (a), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 16, Ch. 37, L. 1977.

Amendments

The 1977 amendment substituted "public assistance activities" for "public welfare activities" near the end of the first sentence; and made a minor change in phraseology.

71-214. County commissioners ex officio county welfare board—compensation. The board of county commissioners, ex officio, shall be the county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day.

History: En. Subd. (b), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 129, L. 1939; amd. Sec. 17, Ch. 37, L. 1977.

Amendments

The 1977 amendment substituted "public assistance matters" for "public welfare matters" in the first sentence; and made minor changes in phraseology, punctuation and style.

71-216. Powers and duties of the county board. The county board of public welfare is responsible for establishing local policies and such rules as are necessary to govern the county department and local administration of public assistance activities except that all such policies and rules must be in conformity with general policies and rules established by the state department. The county board of public welfare shall review the determinations of eligibility and amount of payment to or on behalf of individuals made by the staff of the county department for conformity with the afore-said rules. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by the board.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 18, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "state department" for "state board."

The 1977 amendment deleted "and regulations" after "rules" throughout the section; substituted "public assistance activities" for "public welfare activities" in the first sentence; and made minor changes in phraseology.

71-217. Staff personnel—how selected, paid, and controlled—dismissal.

(1) Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department may supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the state department, but the state department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause.

(2) Public assistance staff personnel attached to the county board shall be paid from state public assistance funds both their salaries and their travel expenses as provided for in 59-538, 59-539, and 59-801, when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the state department from county poor funds the full amount of the salaries and travel expenses not reimbursed to the state department by the federal government and the full amount of the state department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the state department by the federal government. Under circumstances prescribed by the state department, the reimbursement by the county board of public welfare may be less than the county share as prescribed above. All other administrative costs of the county department shall also be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within 20 days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 48, Ch. 439, L. 1975; amd. Sec. 19, Ch. 37, L. 1977; amd. Sec. 1, Ch. 109, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 109. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "state

department" in the second and third paragraphs for "state department of public welfare."

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary traveling expenses and their necessary subsistence expenses" in the second paragraph.

Chapter 37, Laws of 1977, inserted the subsection designations; substituted "public assistance funds" for "public welfare funds" near the beginning of subsection (2); and made minor changes in phraseology, punctuation and style.

Chapter 109, Laws of 1977, substituted "the full amount * * * by the federal gov-

ernment" in the first sentence of subsection (2) for "one-half of the payments so made to its public assistance staff personnel"; and substituted the second sentence of subsection (2) for "except that, under circumstances prescribed by the state department, the reimbursement by the county board of public welfare may be less than one-half."

Saving Clause

Section 2 of Ch. 109, Laws 1977 read "This act does not affect rights and duties

that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 3 of Ch. 109, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

71-218. Department—functions. County departments are under the supervision of the state department and subject to audit by the state department.

History: En. Subd. (c), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 6, Ch. 129, L. 1939; amd. Sec. 22, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "the state department" for "such field supervisors" after "supervision of"; substituted

"audit by the state department" for "audit by such field auditors as may be appointed for this purpose by the state department"; deleted a second sentence relating to the positions of field supervisor and field auditor; and made minor changes in phraseology.

71-220. Repealed.

Repeal

Section 71-220 (Subd. (e), Sec. 10, Part 1, Ch. 82, L. 1937), relating to reports by

the county boards to the state department of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-221. Functions and activities of the county department. The county department of public welfare shall be charged with the local administration of all forms of public assistance and welfare operations in the county, including, but not limited to, food stamp programs and social services programs. Provided, however, all such local administration must conform to federal and state law and the rules and regulations as established by the state department.

History: En. Subd. (a), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 199, L. 1951; amd. Sec. 1, Ch. 201, L. 1975.

sentence; and made minor changes in phraseology and punctuation.

Amendments

The 1975 amendment added "including, but not limited to, food stamp programs and social services programs" to the first

Effective Date

Section 2 of Ch. 201, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 31, 1975.

71-222. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for public assistance purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share

of any other public assistance activity that may be carried on jointly by the state and the county.

(2) The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(3) As soon as the preliminary budget provided for in 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state department, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(4) The state department shall promptly examine the preliminary budget in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(5) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(6) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the state department.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963; amd. Sec. 2, Ch. 69, L. 1967; amd. Sec. 23, Ch. 121, L. 1974; amd. Sec. 20, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "state

department" for "state department of public welfare" in subsections (1) and (6); substituted "state department" for "state administrator of public welfare" in subsections (3), (4) and (5); substituted "department of health and environmental sciences" for "state board of health" in subsection (6); and made minor changes in phraseology, punctuation and style.

The 1977 amendment reduced the tax

levy in subsections (1) and (6) from 17 mills to 13.5 mills; substituted "public assistance purposes" for "all purposes of this act" in the second sentence of subsection (1); substituted "public assistance activity" for "welfare activity" near the end of the second sentence of subsection

(1); substituted "public assistance laws" for "Public Welfare Act" at the end of subsection (3); substituted "public assistance activity" for "welfare activity" near the end of the first sentence of subsection (6); and made minor changes in phraseology, punctuation and style.

71-223. Right of appeal. (1) If an application for assistance under Title 71, except for benefits under chapter 19 pertaining to veterans' welfare, is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the board of social and rehabilitation appeals for a fair hearing by addressing a request for a hearing to the state department. The board of social and rehabilitation appeals shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing. A county welfare board which is involved in a grievance shall be represented at such a hearing.

(2) The state department may, upon its own motion, review any decision of a county welfare board, and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The state department may have an additional investigation made, and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this act.

(3) If the state department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the state department shall, upon request, be given reasonable notice and an opportunity for a fair hearing by the board of social and rehabilitation appeals.

(4) All decisions of the state department or the board of social and rehabilitation appeals are final and are binding and shall be complied with by the county department.

History: En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953; amd. Sec. 24, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "Title 71, except for benefits under chapter 19 pertaining to veterans' welfare" for "this act" in the first sentence of subsection (1); deleted "by the county welfare board" after "acted upon" in the first sentence of subsection (1); substituted "board of social and rehabilitation appeals" for "state board of public welfare" in three places in subsection (1); deleted "public welfare" after "state department" in the first sentence of subsection (1); substituted "a request of a hearing" for

"such an appeal" in the second sentence of subsection (1); deleted "and the county welfare board" before "prompt notice" in the second sentence of subsection (1); deleted a former third sentence in subsection (1) relating to the state board prescribing the manner and form for appeals; inserted "which is involved in a grievance" after "county welfare board" in the final sentence of subsection (1); substituted "state department" for "state board" throughout subsections (2) and (3); substituted "board of social and rehabilitation appeals" for "state board" in subsection (3); substituted "state department or the board of social and rehabilitation appeals" for "state board" in subsection (4); and made minor changes in phraseology, punctuation and style.

71-224, 71-225. Repealed.

Repeal

Sections 71-224 and 71-225 (Secs. 13, 14, Part 1, Ch. 82, L. 1937; Sec. 9, Ch. 129, L. 1939), relating to the power of the

state board of public welfare to hold property and make contracts, were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-226. Fraudulent acts. Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device public assistance to which he is not entitled is guilty of theft as provided in 94-6-302.

History: En. Sec. 15, Part 1, Ch. 82, L. 1937; amd. Sec. 21, Ch. 37, L. 1977; amd. Sec. 1, Ch. 273, L. 1977.

a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 273. Since the amendments do not appear to conflict, the code commissioner has made

Amendments

Chapter 37, Laws of 1977, made minor changes in phraseology and punctuation.

Chapter 273, Laws of 1977, rewrote this section. For prior version, see parent volume.

71-227. Approval or denial of applications.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, sub-

stituted "state department" throughout this section for "state board."

71-228. Revocation of assistance. If the county or state departments have reason to believe, by reason of a complaint or otherwise, that public assistance under Title 71 has been improperly granted, it shall have an investigation made. If it appears as a result of an investigation that the assistance was improperly granted, the state department shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked.

History: En. Sec. 17, Part 1, Ch. 82, L. 1937; amd. Sec. 25, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "Title 71" for "this act" and made minor changes in phraseology.

71-229. Assistance not assignable nor subject to legal process. Except as otherwise provided in Title 71, assistance granted under Title 71 is not transferable or assignable, at law or in equity, and none of the money paid or payable under Title 71 is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974.

as otherwise provided in Title 71"; substituted "Title 71" twice for "this act"; and made minor changes in phraseology.

Amendments

The 1974 amendment inserted "Except

71-230. Method of issuing assistance grants—reimbursement. (1) Checks in payment of public assistance, with the exception of general relief, shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department, and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee, and the original monthly payment shall be from the state public assistance accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.

(2) Whenever the state department, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of old-age assistance, aid to the needy blind, or aid to the permanently and totally disabled has, by reason of any physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare, the department may, under standards established under the state plan, make the public assistance payment on behalf of such recipient to another person found by the department to be interested in or concerned with the welfare of such needy individual. Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the state department, running in favor of the needy individual and the state of Montana, conditioned upon the faithful use by such other person of the funds for the welfare of the needy individual. Such bond shall be in an amount equal to six times the amount of the monthly payment involved.

(3) On or before the 20th of each month the state department shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the state department within 20 days after the claim is presented.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. 1, Ch. 244, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 22, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "state department" throughout the section for "state department of public welfare."

The 1977 amendment deleted "as provided for in each part of this act" after "payment of public assistance" in the first sentence of subsection (1); substituted "public assistance accounts" for "public welfare accounts" at the end of the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

71-231.1. Repealed.

Repeal

Section 71-231.1 (Sec. 1, Ch. 179, L. 1953), relating to filing of records showing

the names of recipients of public assistance, was repealed by Sec. 2, Ch. 425, Laws 1977.

71-231.4. Audit of public assistance records. All applications, information, and records concerning any applicant or recipient of assistance or services under this title are subject to audit for legislative oversight or determination of welfare fraud.

History: En. 71-231.4 by Sec. 1, Ch. 425, L. 1977.

Title of Act

An act revising the law regarding public assistance records; repealing section 71-231.1, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 425, Laws 1977 read "Section 71-231.1, R. C. M. 1947, is repealed."

71-232. Repealed.

Repeal

Section 71-232 (Sec. 21, Part 1, Ch. 82, L. 1937), relating to the limitations of

public welfare act, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-233. Prerequisite to eligibility of applicant, etc.**Compiler's Notes**

Section 50, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state department of public welfare."

71-233.1. Investigations and enforcement actions by department of revenue. When requested by the department of social and rehabilitation services, the department of revenue shall:

(1) investigate matters relating to public assistance and vendor payments, including but not limited to the claim for an acceptance of public assistance benefits by public assistance recipients and the receipt and disbursal of public assistance funds by state, county, or other governmental agencies;

(2) institute civil or criminal actions in the appropriate courts to enforce the public assistance laws and violations thereof.

History: En. Sec. 1, Ch. 295, L. 1973; amd. Sec. 23, Ch. 37, L. 1977.

operation of other agencies to effectuate the purposes of this act.

Title of Act**Amendments**

An act authorizing the department of revenue to investigate matters relating to public welfare payments; to institute civil and criminal actions for enforcement of the welfare laws and to require the co-

The 1977 amendment substituted references to public assistance for references to welfare throughout the section; and made minor changes in phraseology, punctuation and style.

71-233.2. Co-operation of governmental agencies with department of revenue. All state departments and agencies and county or other governmental agencies shall co-operate with the department of revenue and its employees to effectuate the purpose of this act.

History: En. Sec. 2, Ch. 295, L. 1973.

71-233.3. Information made available to department of revenue. (1) The department of social and rehabilitation services and its local units shall make available to the department of revenue information contained in the public assistance files pertinent to the investigations and judicial actions described in 71-233.1.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue all records, files, memoranda, forms, or other papers relating to public assistance matters, including income tax returns filed with the department of revenue.

History: En. Sec. 3, Ch. 295, L. 1973; amd. Sec. 24, Ch. 37, L. 1977.

lic assistance files" for "welfare files" in subsection (1); substituted "public assistance matters" for "public welfare matters" in subsection (2); and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "pub-

71-233.4. Nondisclosure of information resulting from investigation—violation of disclosure provisions by employees. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investigation shall be disclosed except in accordance with the laws applicable to the source of information; provided, however, such information may be used or disclosed as necessary in any court action.

(2) Each employee violating the disclosure provisions shall be subject to the criminal charge and penalties applicable to the source of information.

History: En. Sec. 4, Ch. 295, L. 1973.

71-233.5. Repealed.

Repeal

Section 71-233.5 (Sec. 5, Ch. 295, L. 1973), relating to the definition of "pub-

lic welfare" and "welfare," was repealed by Sec. 53, Ch. 37, Laws 1977.

71-234. Determination of liability for contribution, etc.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, substituted "state department" throughout

this section for "state department of public welfare."

71-235. Living relatives—jointly and severally liable—scale of contribution. (1) The living relatives of each needy person named in this act are jointly and severally liable in the order named in 71-233 to the needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

RELATIVES' CONTRIBUTION SCALE

A. Net monthly income of responsible relatives in one family in dollars	B. Number of persons dependent upon income exclusive of applicant									
	1	2	3	4	5	6	7	8	9	10 and over
C. Maximum required monthly contribution										
Under 304.....	0	0	0	0	0	0	0	0	0	0
305 to 399.....	22	0	0	0	0	0	0	0	0	0
400 to 489.....	43	14	0	0	0	0	0	0	0	0
490 to 619.....	72	43	29	22	7	0	0	0	0	0
620 to 739.....	101	72	58	50	36	29	14	0	0	0
740 to 869.....	130	101	86	79	65	58	43	29	14	0
870 to 1024.....	144	130	115	108	94	86	72	58	43	29
1025 to 1179.....	144	144	144	144	130	123	108	94	79	65
1180 to 1339.....	144	144	144	144	144	144	144	130	115	101
1340 and up.....	144	144	144	144	144	144	144	144	144	130

(2) For the purposes of this act:

(a) a needy person is one who is eligible for public assistance under the laws of this state; and

(b) "net monthly income" means one-twelfth of the difference between the net income for the taxable year as the term net income is defined in 84-4901(10) and the state income tax paid as determined by the state income tax return filed during the current year.

(3) In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each spouse during that time is one-half of the amount shown in the scale established by this act.

(4) Whenever the responsible relative owes a duty of support to a minor dependent child and public assistance moneys have been paid to or on behalf of that child, the liability for contribution is measured by the lesser of the amount of public assistance paid or the amount of support ordered by court decree.

(5) A person who is receiving public assistance on behalf of a minor dependent child may not be held liable for contribution for the period during which public assistance was received.

History: En. Sec. 3, Ch. 180, L. 1953; tributions required from low-income and
amd. Sec. 1, Ch. 98, L. 1973; amd. Sec. 2, large families and increasing the contribu-
Ch. 379, L. 1977. tions required from high-income and small
families.

Amendments

The 1973 amendment rewrote the contri- The 1977 amendment added subsections
butions table, generally reducing the con- (4) and (5); and made minor changes in
phraseology, punctuation and style.

71-236. Investigation of relatives' state income tax returns—return prima facie evidence of income—penalty for disclosing contents of return. The state department shall be required and it shall be its duty, when necessary to determine the financial circumstances of those relatives herein named, to secure from the state department of revenue a report of the amount of income set forth on the return required by section 84-4914. The state department of revenue is authorized and it shall be its duty to divulge or make known to the state department the amount of income or any particulars set forth or disclosed in any report or return required under the State Income Tax Act, and submitted by the relatives herein named.

It shall be unlawful for the state department or any deputy, assistant, agent, clerk or other officer or other employee to divulge or make known in any manner any information secured from the state department of revenue in the administration of this act, except for purposes directly connected with the administration of this act. Violation of the provisions of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

History: En. Sec. 4, Ch. 180, L. 1953; zation" and "department" for "board"
amd. Sec. 49, Ch. 391, L. 1973; amd. Sec. throughout the section.
49, Ch. 121, L. 1974.

Amendments

The 1973 amendment substituted "de- The 1974 amendment substituted "state
partment of revenue" for "board of equali- department" for "state department of
public welfare" twice in the first para-
graph and for "department" in the third
paragraph.

71-237. Effect of liability of relative on granting, etc.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub- stituted "state department" in this section
for "state public welfare department."

71-239, 71-240.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub- tions for "state department of public
stituted "state department" in these sec- welfare."

71-241. Repealed.**Repeal**

Section 71-241 (Sec. 1, Ch. 228, L. 1953; Sec. 15, Ch. 212, L. 1965; Sec. 1, Ch. 60,

L. 1967), relating to liens on real property of recipients of public assistance, was repealed by Sec. 3, Ch. 299, Laws 1973.

71-241.1. Subrogation and third party liability. (1) The state department is subrogated to the right of each needy person who is a recipient of medical benefits under Titles XIX or XX of the Social Security Act to recover damages or compensation from a third party to the extent necessary to reimburse the state department for medical benefits paid to or on behalf of the needy person. Upon determination that a third party is liable for the medical expenses of a needy person under this section, the department shall immediately notify the third party of the subrogation.

(2) The state department may, in the name of the needy person to whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the needy person. From the amount collected from legal proceedings or as a result of settlement, the department shall retain the full amount previously paid as medical benefits, allocating to the county and federal government a share proportionate to their contribution and, after deducting the costs of the proceeding, deliver the remainder to the needy person. The total amounts awarded as compensation for pain and suffering or which are punitive in nature shall be delivered to the needy person. This section does not affect the needy person's right to initiate and prosecute to final conclusion an action for damages or compensation in his own name.

(3) A needy person who is a recipient of medical benefits, or his legal representative, shall notify the state department of any action initiated, or of any compromise or settlement agreed to by the needy person, or his legal representative, for the recovery of compensation or damages for medical expenses to which medical benefits have been applied.

Notice shall be given by service upon the state department of the legal instrument initiating the action or embodying the compromise or settlement.

(4) No portion of attorney's fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the state department under subsection (1) without prior approval of the state department.

(5) As used in this section, "third party" means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a needy person to which Title XIX or XX benefits have been applied, and includes but is not limited to insurers, health service organizations, and those liable in tort.

History: En. 71-241.1 by Sec. 1, Ch. 379, L. 1977.

Title of Act

An act subrogating the department of

social and rehabilitation services to the rights of recipients of medical assistance; amending sections 71-235, 71-308, 71-511, 71-1524, and 93-2601-51, R. C. M. 1947.

71-242. Award of public assistance, etc.**Compiler's Notes**

Section 50, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state department of public welfare."

71-243 to 71-246. Repealed.**Repeal**

Sections 71-243 to 71-246 (Secs. 3 to 6, Ch. 228, L. 1953), relating to liens on real

property of recipients of public assistance, were repealed by Sec. 3, Ch. 299, Laws 1973.

71-246.1. Liens released. All liens held by the department of social and rehabilitation services under authority granted by sections 71-241 through 71-250, R.C.M. 1947, are unenforceable and shall be released.

History: En. Sec. 1, Ch. 299, L. 1973.

Constitutionality**Title of Act**

An act to render unenforceable all liens held by the state department of social and rehabilitation services permitted under sections 71-241 through 71-250, R. C. M. 1947; and to repeal sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248 and 71-249, R. C. M. 1947, relating to the lien of the state department of social and rehabilitation services upon all real property of an applicant for public assistance and the enforcement of the lien and amending section 71-247, R. C. M. 1947.

This section is a legitimate and constitutional exercise of legislative power; it does not violate article II, section 31 of the 1972 constitution. *Carkulis v. Doe*, — M —, 521 P 2d 1305.

This section did not violate article II, section 31 of the 1972 constitution prohibiting ex post facto laws and laws impairing the obligation of contracts since the state had no vested rights in its liens. *Carkulis v. Doe*, — M —, 521 P 2d 1305.

71-247. Recovery from the estate of a decedent—claim for assistance paid. Upon the death of any recipient of public assistance other than aid to dependent children, or general relief, the state department shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this act, separately stating therein the amount of all assistance paid from and after the 1st day of July, 1953.

The state department shall not assert its claim during the lifetime and continued occupancy of any real estate of a deceased recipient's estate by the surviving spouse or dependent as a home or residence unless other claimants or persons shall have instituted proceedings for the probate of the estate of the deceased recipient, in which case the state department shall file its claim hereunder.

History: En. Sec. 7, Ch. 228, L. 1953; amd. Sec. 2, Ch. 299, L. 1973; amd. Sec. 49, Ch. 121, L. 1974.

Amendments

The 1973 amendment deleted from the end of the first paragraph the words "which is secured by the lien herein provided for" and a second sentence making the state's claim a preferred claim; deleted a second paragraph prohibiting enforcement of a claim against real estate occupied by a surviving spouse or dependent but continuing a lien on the real estate; deleted "lien or" before "claim" near the beginning of the present second paragraph;

substituted "any real estate of a deceased recipient's estate" in the present second paragraph for "said real estate"; and inserted "as a home or residence" in the present second paragraph.

The 1974 amendment substituted "state department" for "state department of public welfare" in the first paragraph, and for "state board of public welfare" and "board" in the second paragraph.

Repealing Clause

Section 3 of Ch. 299, Laws 1973 read "Sections 71-241, 71-243, 71-244, 71-245, 71-246, 71-248, 71-249, R. C. M. 1947, are repealed."

71-248, 71-249. Repealed.**Repeal**

Sections 71-248, 71-249 (Secs. 8, 9, Ch. 228, L. 1953), relating to property of re-

ipients of public assistance, were repealed by Sec. 3, Ch. 299, Laws 1973.

71-250. Disposition of sums recovered.**Compiler's Notes**

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state board."

CHAPTER 3—GENERAL RELIEF**Section**

71-302.2. Residency requirements.

71-303. Eligibility for general relief based on investigation of resources.

71-305. Right of equal consideration.

71-306. Grievances concerning general relief assistance.

71-307. Relief by check or disbursing orders.

71-308. County to provide medical aid and hospitalization to indigent.

71-311. Grants from state funds to counties.

71-314. Amount of general relief assistance to be determined by county board.

71-302. Repealed.**Repeal**

Section 71-302 (Subd. (a), Sec. 2, Part 2, Ch. 82, L. 1937; Sec. 11, Ch. 129, L. 1939; Sec. 4, Ch. 117, L. 1941; Sec. 1, Ch.

156, L. 1951; Sec. 1, Ch. 99, L. 1963), relating to eligibility requirements for general relief, was repealed by Sec. 2, Ch. 152, Laws 1973.

71-302.1. Repealed.**Repeal**

Section 71-302.1 (Sec. 1, Ch. 152, L. 1973), relating to eligibility requirements

for general relief, was repealed by Sec. 3, Ch. 225, Laws of 1974.

71-302.2. Residency requirements. (1) Any person otherwise qualified who makes his home in Montana with the intent to become a resident shall be eligible for general relief. Upon the filing of his application in the county of residence, a qualified applicant's general relief assistance shall be paid entirely from state funds until he has resided for 1 continuous year in Montana, at which time he shall become a financial responsibility of the county in which he resides at the expiration of the 1-year period. A person who leaves Montana with the intent to reside in another state and later returns to reside in Montana is considered a new resident for the purposes of this act. If a recipient moves from his original county of residence to reside in another county, he shall continue to be a financial responsibility of the original county of residence for 1 year from the date of his change of residence. If during this 1-year period the individual resides in several counties, he shall become a financial responsibility of the county in which he resides at the expiration of the 1-year period. County medical assistance under 71-308 shall not be entitled to be paid from state funds.

(2) If a person is absent from the state voluntarily, he is ineligible for general relief in Montana. Aliens found to be illegally within the United States are not eligible for relief from state funds.

(3) Recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or a private charitable

institution shall have the county share of financial participation paid entirely from state funds for 1 year from the original date of entrustment or the original date of state residency, whichever is earlier. At the expiration of such period, the appropriate county, as defined by the following guidelines, shall become financially responsible to the extent of its legally required share of participation. The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility. In all cases where a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section. A person who reaches majority in an institution, upon release and restoration to competency, may determine his own county residency. Such person shall continue to be a financial responsibility of the county which initiated the original commitment for 1 year from the date of release, at which time he shall become a financial responsibility of his new county of residence.

(4) Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they are returned at state expense to their state of residence or origin. Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim.

(5) "Interstate transient", as the term is used in this act, is defined as an individual who has signed a declaration that he is unable to pay for his own necessities or transportation to return to his state of residence or origin and is en route to a point outside of this state, being unable, due to unexpected distress, to reach his destination.

History: En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977.

Title of Act

An act amending Section 71-308, R. C. M. 1947, to clarify residency requirements for county financial participation in assistance to residents, nonresidents, transients, incompetents, and aliens, to recodify county medical responsibilities, and to pay medical expenses for accidental injury to interstate transients from

state funds; and repealing sections 71-114, 71-116, 71-117, 71-302.1, and 71-304, R. C. M. 1947.

Amendments

The 1977 amendment substituted "a qualified applicant's general relief assistance" for "his assistance" in the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW

Constitutionality

Durational residency requirement in state welfare program imposed unconstitutional restraint on right to travel. Pease v. Hansen, 404 U S 70, 30 L Ed 2d 224,

92 S Ct 318, following Shapiro v. Thompson, 394 U S 618, 22 L Ed 2d 600, 89 S Ct 1322, and reversing 157 M 99, 483 P 2d 720.

Despite the invalidity of the require-

ment of one year's residency in the state in order to qualify for relief, county's obligation to pay general relief assistance may be limited by legislature's residency requirements as it did in section 71-302;

where no provision has been made to care for transients, state must provide relief until such time as indigent has established county residency. *Pease v. Hansen*, 159 M 43, 494 P 2d 925.

71-303. Eligibility for general relief based on investigation of resources.

An applicant for general relief assistance, including medical care and hospitalization, shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life. Assistance shall be provided to meet a minimum subsistence compatible with decency and health.

History: En. Subd. (b), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 129, L. 1939; amd. Sec. 26, Ch. 37, L. 1977.

cant for general relief assistance" for "applicant for assistance" near the beginning of the section; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "appli-

71-304. Repealed.

Repeal

Section 71-304 (Subd. (c) to (f), Sec. 2, Part 2, Ch. 82, L. 1937), relating to the

status of aliens and interstate transients, was repealed by Sec. 3, Ch. 225, Laws of 1974.

71-305. Right of equal consideration. Persons eligible for and in need of general relief, whether employable or unemployable, shall be given equal consideration for public assistance as those persons eligible for assistance under other parts of this act.

History: En. Sec. 3, Part 2, Ch. 82, L. 1937; amd. Sec. 27, Ch. 37, L. 1977.

Amendments

The 1977 amendment inserted "general" before "relief"; and made minor changes in phraseology and punctuation.

71-306. Grievances concerning general relief assistance. Individuals or committees with complaints or grievances concerning general relief assistance may present their complaints or grievances to either the county board or the state department, and due consideration shall be given all proven facts presented by the individuals or committees. The county board or the state department shall take action to relieve situations brought to their attention under this section to the extent of funds available.

History: En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951; amd. Sec. 27, Ch. 121, L. 1974; amd. Sec. 28, Ch. 37, L. 1977.

Amendments

The 1974 amendment deleted two sentences at the beginning of the section which read: "If an application for assistance under this chapter is not acted upon by the county welfare board promptly or if a decision is made with which the

applicant or recipient is not satisfied, he may appeal to the state department for a fair hearing. The state department shall, upon receipt of such an appeal, give the applicant or recipient prompt notice and opportunity for a fair hearing"; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "general relief" before "assistance" in the first sentence; and made a minor change in punctuation.

71-307. Relief by check or disbursing orders. (1) All general relief disbursements by county departments of public welfare shall be by warrant or check. However, if the county welfare department finds that a recipient

is in the habit of dissipating general relief allowances instead of using them for the purposes intended or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments. All such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. A recipient of general relief must register for employment with the state employment service and must accept available employment within his or her capability. Refusal to accept such employment will render the recipient ineligible for further general relief assistance. If the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform the work at the prevailing rate of wages paid by that county for similar work, to be paid from the county poor fund in place of granting him general relief.

(2) The county department of public welfare shall provide coverage under the Workers' Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

(3) Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided shall lose his eligibility for general relief for 1 week for each refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977.

Amendments

Chapter 121, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; substituted "division of workmen's compensation of the department of labor and industry" for "industrial accident board" in sub-

section (2); and made minor changes in phraseology and punctuation.

Chapter 208, Laws of 1974, inserted the provision in subsection (1) making it mandatory for the county department to have a recipient of general relief work if the county has work available.

The 1977 amendment inserted "general" before "relief" in two places in subsection (1); substituted references to workers' compensation in two places in subsection (2) for references to workmen's compensation; and made minor changes in phraseology, punctuation and style.

71-308. County to provide medical aid and hospitalization to indigent.

(1) Except as provided in other parts of this act, medical aid and hospitalization for nonresidents within the county and county residents unable to provide these necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, and are payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as are approved by the department of health and environmental sciences or the state medical association or, in the case of osteopathic practitioners, by the state osteopathic association or chiropractors by the state chiropractic association or optometrical services as approved by the Montana optometric association or dental services as approved by the dental association.

"Medical" or "medicine" as used in this section refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by physicians appointed by the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The board of county commissioners shall make suitable arrangements to provide respectable burial for nonresidents within the county and county residents for whom the expenses are not otherwise available.

(4) The department of social and rehabilitation services may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". However, the definition may not allow payment by a county for general assistance-medical for persons whose income exceeds 300% of the limitation for obtaining regular county general relief assistance.

(5) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 71-241.1 which relate to medical benefits provided under Titles XIX and XX of the Social Security Act apply to medical benefits provided for in this section.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974; amd. Sec. 1, Ch. 375, L. 1975; amd. Sec. 30, Ch. 37, L. 1977; amd. Sec. 3, Ch. 379, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 379. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 121, Laws of 1974, inserted the numerical subsection designations at the beginning of the paragraphs; substituted "department of health and environmental sciences" for "state board of health" in subsection (1); substituted references to "state department," in the paragraph deleted by Ch. 225, for references to "department of public welfare"; and made minor changes in phraseology and punctuation.

Chapter 225, Laws of 1974, substituted "nonresidents within the county and county residents" for "persons" in the first sentence of subsection (1) and in subsection (2) and deleted a paragraph which read: "In automobile accident cases wherein transients traveling through the state of Montana are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse each county in full upon proper claim being made to the department of public welfare; provided, further, in all other accident cases wherein such transients are injured, medical aid and hospitalization shall be paid for by the county wherein the accident occurred and the department of public welfare shall reimburse such county for one-half of such medical aid and hospitalization paid by such county, upon proper claim being made to the department of public welfare."

The 1975 amendment added subsections (4) and (5); and made a minor change in punctuation.

Chapter 37, Laws of 1977, substituted "section" for "act" near the end of subsection (1); inserted "relief" before "as-

sistance" at the end of subsection (4); and made minor changes in phraseology, punctuation and style.

Chapter 379, Laws of 1977, added the last two sentences to subsection (5); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 3 of Ch. 225, Laws 1974 read "Sections 71-114, 71-116, 71-117, 71-302.1, and 71-304, R. C. M. 1947, are repealed."

71-310. Repealed.

Repeal

Section 71-310 (Sec. 8, Part 2, Ch. 82, L. 1937), relating to certification for re-

Emergency Hospitalization

It was not the intent of the legislature to require a total lack of resources for an indigent person to receive medical assistance; rather it was to include those persons who do not have the present or future resources sufficient to pay for the hospital and medical services required in emergency instances. State ex rel. Hendrickson v. Gallatin County, — M —, 526 P 2d 354.

lief employment, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-311. Grants from state funds to counties. A county may apply to the state department for an emergency grant-in-aid and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the state department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any welfare activity carried on jointly with the state department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) any other information required by the state department.

(2) Within 10 days of receipt of the application and affidavit, the state department shall determine whether the county poor fund will be depleted and shall give notice to the county of the state department's intention to deny or allow the grant-in-aid.

(3) Within 10 days of receiving notice from the state department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the state department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an

emergency fund account to be kept separate and distinct from the poor fund account. All expenditures from the emergency fund account shall be made by a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the state department may be used only for welfare activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the state department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the state department.

History: En. Sec. 9, Part 2, Ch. 82, L. 1937; amd. Sec. 14, Ch. 129, L. 1939; amd. Sec. 7, Ch. 117, L. 1941; amd. Sec. 11, Ch. 199, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 31, Ch. 37, L. 1977; amd. Sec. 1, Ch. 168, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 168. The code commissioner has directed that the section be set forth as amended by Ch. 168.

Amendments

The 1974 amendment substituted "state department" for "state board," "state department of public welfare," "state board of public welfare," and "state administrator."

Chapter 37, Laws of 1977, substituted "If the whole of the 13.5-mill levy authorized by 71-106" at the beginning of the section for "If the whole of a six (6) mill levy together with the whole of the per capital tax authorized by said section 71-106"; substituted "public assistance activ-

ity" near the middle of subsection (1) for "welfare activity"; substituted "is authorized to issue a check" in the first sentence of subsection (2) for "may authorize the state department to issue a check"; and made minor changes in phraseology, punctuation and style.

Chapter 168, Laws of 1977, rewrote the section. For prior version, see parent volume and 1974 amendment note.

Saving Clause

Section 2 of Ch. 168, Laws 1977 read "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1977."

Separability Clause

Section 3 of Ch. 168, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

71-314. Amount of general relief assistance to be determined by county board. The amount of general relief assistance granted any person or family shall be determined by the county board of public welfare according to the rules and standards of assistance established by the state department.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951; amd. Sec. 32, Ch. 37, L. 1977.

Amendments

The 1977 amendment inserted "general relief" before "assistance" near the beginning of the section; and deleted "and regulations" after "rules."

CHAPTER 4—OLD-AGE ASSISTANCE

71-401 to 71-411. Repealed.

Repeal

Sections 71-401 to 71-411 (Secs. 1 to 10, Part 3, Ch. 82, L. 1937; Secs. 1, 2, 9, Ch. 213, L. 1943; Sec. 1, Ch. 46, L. 1945; Sec. 1, Ch. 69, L. 1947; Sec. 1, Ch. 46, L. 1949; Sec. 2, Ch. 47, L. 1949; Sec. 1, Ch. 155, L. 1949; Secs. 15 to 19, Ch. 199, L. 1951; Secs. 2, 3, Ch. 71, L. 1957; Sec.

1, Ch. 105, L. 1959; Sec. 1, Ch. 5, L. 1961; Secs. 18 to 20, Ch. 212, L. 1965; Sec. 6, Ch. 261, L. 1971; Sec. 1, Ch. 294, L. 1971; Secs. 49, 50, Ch. 121, L. 1974), relating to old-age assistance, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

71-413. Repealed.

Repeal

Section 71-413 (Sec. 12, Part 3, Ch. 82, L. 1937; Sec. 20, Ch. 199, L. 1951), relating to change of residence of person

receiving old-age assistance, was repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

CHAPTER 5—AID TO DEPENDENT CHILDREN

Section

71-501. "Dependent child" defined.

71-508. County share of participation.

71-509. Periodic reconsideration and changes in amount of assistance—appointment of guardian or payment to another person.

71-511. Payment of public assistance money—subrogation of the department of social and rehabilitation services—schedule of payments.

71-501. "Dependent child" defined. (1) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 21 who is a student under the regulations prescribed by the state department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin in a place of residence maintained by one or more of such relatives as his or their own home.

(2) Aid to dependent children may not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of this state by the fact that the child is living in the home of his father who is, in the opinion of the county board of public welfare of the appropriate county, either unemployable or who is honestly and responsibly seeking proper employment and is unable to find such employment or by the fact that the child is living in the home of a head of a household who is at the time receiving job training under the laws of this state; nor may

the benefits which would otherwise accrue to the child for aid to dependent children under the laws of the state be reduced by reason of any such cause.

(3) Primary factors in determining whether a father is honestly and responsibly seeking employment include his willingness to register for employment with the department of labor and industry, if that department has a representative in his county of residence, and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

(4) The state department may establish additional criteria for determining whether a father is honestly and responsibly seeking employment.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 1, Ch. 309, L. 1974; amd. Sec. 33, Ch. 37, L. 1977.

Amendments

Chapter 121, Laws of 1974, substituted "state department" for "state welfare department" in subsection (1); substituted "department of labor and industry" for "Montana state employment services" in subsection (3); substituted "state department of social and rehabilitation services" for "department of public welfare" in subsection (4); and made minor changes in phraseology, punctuation and style.

Chapter 309, Laws of 1974, effective July 1, 1975, inserted "for welfare purposes" near the beginning of subsection (1); substituted "must be deprived" for "who have been deprived" in the second sentence of subsection (1); inserted "continued unemployment" in the second sentence of subsection (1); and made minor changes in phraseology and style.

The 1977 amendment inserted the subdivision designations in subsection (1); substituted "public assistance purposes" for "welfare purposes" near the beginning of subdivision (1)(a); deleted "of social and rehabilitation services" after "state department" in subsection (4); and made minor changes in phraseology, punctuation and style.

71-503. Administration.

Compiler's Notes

Section 50, Ch. 121, Laws 1974, substituted "state department" throughout

this section for "state department of public welfare" and "state board of public welfare."

71-508. County share of participation. Each county department shall reimburse the state department in the amount of one-third ($\frac{1}{3}$) of the approved aid to dependent children grants exclusive of the federal share.

History: En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957; amd. Sec. 1, Ch. 7, L. 1961; amd. Sec. 2, Ch. 292, L. 1971; amd. Sec. 2, Ch. 273, L. 1971; amd. Sec. 2, Ch. 309, L. 1974.

Compiler's Notes

The note following this section in the parent volume is now obsolete.

Amendments

The 1974 amendment deleted a proviso at the end of the section; and deleted a second sentence. For prior version, see parent volume.

71-508.1. Repealed.

Repeal

Section 71-508.1 (Sec. 3, Ch. 373, L. 1973), relating to federal funding, was re-

pealed by Sec. 3, Ch. 309, Laws of 1974, effective July 1, 1975.

71-509. Periodic reconsideration and changes in amount of assistance—appointment of guardian or payment to another person. (1) All assistance grants made under this chapter shall be reconsidered by the county

department as frequently as may be required by the rules of the state department. After such further investigation as the county department may consider necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the child's circumstances have altered sufficiently to warrant such action. If the county department, after investigation, finds that any recipient is not utilizing the grant adequately for the needs of the child or children, is dissipating such grant or refuses or fails to accept employment or training, and payments made to him would not be used in the best interests of the child or children, the county department may request the county attorney to file a petition in the district court for the appointment of such recipient as guardian of the assistance grant in behalf of the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the county department not less than 5 days before the date set for such hearing; such petition may be filed with the clerk of the district court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interests of the child or children and all parties concerned that such guardian be appointed, he shall order such appointment and may require such guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such times as the court considers advisable.

(2) It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant or sooner on order of the court, upon good cause shown. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the county department to be interested in or concerned with the welfare of such needy child or children in accordance with the rules established by the state department. Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the state department, running in favor of the needy individual and the state of Montana, conditioned upon the faithful use by such other person of the funds for the welfare of the needy individual. Such bond shall be in an amount equal to six times the amount of the monthly payment involved.

(3) When federal law or regulations require, any amount received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises may not be used to decrease the amount of assistance received under this act.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "state

department" for "state department of public welfare."

The 1977 amendment inserted "county" before "department" in the third sentence of subsection (2); deleted "and regulations" after "rules" in the third sentence of subsection (2); transferred the former last two sentences of subsection (3) to the

end of subsection (2); deleted "in a sum not exceeding one hundred dollars (\$100.00) in any one (1) calendar year" after "any amount" near the beginning of subsection (3); and made minor changes in phraseology, punctuation and style.

71-511. Payment of public assistance money—subrogation of the department of social and rehabilitation services—schedule of payments. (1) A payment of public assistance money made to or for the benefit of a dependent child creates a debt due and owing to the department of social and rehabilitation services by the natural or adoptive parents who are legally responsible for the support of the child by statute or court decree in an amount equal to the amount of public assistance paid. However, where the support obligation is based upon a court decree, the debt is limited to the amount of the court decree.

(2) The department is subrogated to the right of the child or person having the care, custody, and control of the child to prosecute any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of monies thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department is subrogated to the debt created by the order and the money judgment is in favor of the department. No obligee may commence an action to recover support due and owing to him without first filing an affidavit with the court stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the state department in writing of the pending action.

(3) In no case may a debt arising under this section be incurred by or collected from a parent or other person while he is the recipient of public assistance monies for the benefit of minor dependent children.

(4) The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

(5) The department or its legal representatives may at any time consistent with the income, earning capacity, and resources of the debtor petition the court having jurisdiction over the particular case to set or reset a level and schedule of payments to be paid upon the debt.

History: En. 71-511 by Sec. 1, Ch. 368, L. 1974; amd. Sec. 4, Ch. 379, L. 1977.

Title of Act

An act subrogating the department of social and rehabilitation services to the right of a child or children or person having the custody of such child or children to prosecute and recover upon support obligations owed by an obligor parent in the amount of public assistance

payments made to such child or children or the amount of court ordered support, whichever is less.

Amendments

The 1977 amendment deleted "or maintain and recover upon" after "prosecute" in the first sentence of subsection (2); added the last sentence to subsection (2); and made minor changes in phraseology, punctuation and style.

-CHAPTER 6—AID TO BLIND

71-601, 71-602. Repealed.

Repeal

Sections 71-601 and 71-602 (Secs. 1, 2, Part 5, Ch. 82, L. 1937; Secs. 1, 2, Ch. 157, L. 1951; Sec. 7, Ch. 71, L. 1957;

Sec. 50, Ch. 121, L. 1974), relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

71-603. Repealed.**Repeal**

Section 71-603 (Sec. 2, Ch. 55, L. 1943), providing that the powers and duties of the state blind commission devolve upon

the state department of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974, effective March 14, 1974, and by Sec. 1, Ch. 210, Laws of 1974.

71-604 to 71-607. Repealed.**Repeal**

Sections 71-604 to 71-607 (Secs. 3 to 6, Part 5, Ch. 82, L. 1937; Sec. 8, Ch. 117, L. 1941; Secs. 4, 5, 8, 9, Ch. 213, L. 1943; Sec. 3, Ch. 47, L. 1949; Sec. 1, Ch. 81, L. 1949; Secs. 3, 4, Ch. 157, L. 1951; Secs. 27 to 30, Ch. 199, L. 1951; Sec. 1, Ch. 153,

L. 1959; Sec. 1, Ch. 4, L. 1961; Sec. 7, Ch. 261, L. 1971; Sec. 1, Ch. 378, L. 1971; Sec. 49, Ch. 121, L. 1974), relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

71-609 to 71-614. Repealed.**Repeal**

Sections 71-609 to 71-614 (Secs. 8 to 13, Part 5, Ch. 82, L. 1937; Sec. 6, Ch. 213, L. 1943; Sec. 2, Ch. 69, L. 1947; Sec. 2, Ch. 155, L. 1949; Secs. 32, 33, Ch. 199,

L. 1951; Sec. 8, Ch. 71, L. 1957; Sec. 1, Ch. 8, L. 1961; Sec. 1, Ch. 155, L. 1971), relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

CHAPTER 7—CHILD WELFARE**Section**

71-708. Powers and duties of the state department.

71-709. Duty to strengthen child welfare services.

71-710. Child rehabilitation.

71-706. Definitions as used in this chapter.**Compiler's Notes**

Section 49, Ch. 121, Laws 1974, substituted "state department" in this sec-

tion for "state department of public welfare."

71-707. Repealed.**Repeal**

Section 71-707 (Sec. 3, Part 6, Ch. 82, L. 1937; Sec. 26, Ch. 264, L. 1955), relating to administration of child welfare

services and child protection functions by the state department of public welfare, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-708. Powers and duties of the state department. Subject to the authority and regulations of the state department and in co-operation with the federal government, the state department shall:

(1) Adopt rules necessary to carry out the purposes of this chapter;

(2) Administer or supervise all child welfare activities of the state except the child welfare activities which are administered by the department of health and environmental sciences.

History: En. Subd. (a), (b), (c), (d), Sec. 4, Part 6, Ch. 82, L. 1937; Subd. (a) rep. Sec. 10, Ch. 117, L. 1941; amd. Sec. 31, Ch. 121, L. 1974.

Amendments

The 1974 amendment substituted "federal government" for "federal children's bureau" in the introductory phrase; de-

leted a subdivision relating to appointment of personnel; deleted "subject to the approval of the state board" from the beginning of subdivision (1); substituted "department of health and environmental sciences" for "state board of health" in subdivision (2); and made minor changes in phraseology, punctuation and style.

71-709. Duty to strengthen child welfare services. The state department shall make provision for establishing and strengthening child welfare services, including protective services and for care of children in family foster homes. When funds are available for that purpose, the state department may make agreements for the payment of compensation for keeping children in family foster homes.

History: En. Subd. (e), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 19, Ch. 129, L. 1939; amd. Sec. 32, Ch. 121, L. 1974.

department" for "child welfare division"; deleted "subject to the approval of the state department" from the last sentence; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "state

71-710. Child rehabilitation. The state department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected, and delinquent children where adequate provision therefor has not been made by law;

(2) use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law;

(3) cooperate for the purposes hereof with all reputable child-helping and child-placing agencies; and

(4) inspect, license, and supervise public and private infants' homes and child-caring and child-placing institutions and agencies.

History: En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955; amd. Sec. 35, Ch. 37, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

CHAPTER 8—PUBLIC WELFARE ACT—PART 7

71-801. Repealed.

Repeal

Section 71-801 (Sec. 1, Part 7, Ch. 82, L. 1937), relating to the title of the public

welfare act, was repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 9—PUBLIC WELFARE ACT PART 8—APPROPRIATIONS, DISPOSITION OF FUNDS AND DISBURSEMENTS

Section

71-901. State treasurer to receive funds.

71-901. State treasurer to receive funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money for public assistance purposes appropriated by the legislature, received from the United States government, or received from any other source shall be paid into the state treasury to the credit of the state department.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 36, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "state department" for "state department of public welfare."

The 1977 amendment substituted "public assistance purposes" for "public welfare purposes" in the second sentence; deleted "for public welfare purposes" after "the United States government" in the second

sentence; deleted "for the purposes set forth in the Public Welfare Act" after "from any other source" in the second sentence; and made minor changes in phraseology and punctuation.

71-902 to 71-904. Repealed.

Repeal

Sections 71-902 to 71-904 (Secs. 2, 3, 4, Part 8, Ch. 82, L. 1937; Secs. 21, 22, Ch. 129, L. 1939), relating to source of state appropriation, method of disbursement

and transfer of funds from specific accounts under the public welfare act, were repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 10—PUBLIC WELFARE ACT PART 9—TO PROVIDE FOR PAYMENTS TO PERSONS HAVING SILICOSIS

Section

- 71-1001. Definitions.
- 71-1002. Administration.
- 71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined.
- 71-1004. Amounts of payments.
- 71-1005. Application for payment.
- 71-1006. Investigation of applications.
- 71-1007. Making payments.
- 71-1008. Conformity with acts of federal government.
- 71-1010. Surviving spouse of person receiving silicosis payments—payments continue.
- 71-1010.1. Prior surviving spouses eligible for silicosis payments.

71-1001. Definitions. (a) and (b) * * * [Same as parent volume.]

(c) "Examining board" shall mean well-qualified physician or physicians, as designated by the division of workers' compensation.

History: Sec. 1, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division of workers' compensation" for "industrial accident board" in subsection (c).

71-1002. Administration. The division of workers' compensation shall administer this chapter. The division shall:

(1) Formulate a plan and adopt rules for the operation of this chapter.

(2) Co-operate with the federal government in all matters of immediate concern pertaining to silicosis.

(3) Publish an annual report and interim reports as may be necessary or required or asked for by the governor.

(4) Designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant.

(5) Designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter.

(6) Pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the division for that purpose.

(7) Develop and co-operate with other agencies in developing measures for the prevention of silicosis.

History: Sec. 2, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975.

Amendments

The 1975 amendment completely rewrote

this section. For prior text, see parent volume.

Cross-References

Industrial accident board abolished and functions transferred, sec. 82A-1005 (1).

71-1003. Eligibility requirements for aid to persons having silicosis, as herein defined. Payment shall be made under this act to any person who:

(a) to (c). * * * [Same as parent volume.]

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Compensation Act of the state of Montana, as provided by chapter 155, Laws of 1959, which will equal the sum of one hundred seventy-five dollars (\$175) hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, which is less in the aggregate than one hundred seventy-five dollars (\$175), then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided by chapter 155, Laws of 1959, and one hundred seventy-five dollars (\$175) per month.

History: Sec. 3, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L.

1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973.

Amendments

The 1973 amendment increased the monthly amount specified in three places in subdivision (d) from \$158.50 to \$175.00.

71-1004. Amounts of payments. Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the division of workmen's compensation; been determined by the division of workmen's compensation to be entitled payment under this chapter for silicosis, shall be granted a payment by the division of workmen's compensation of one hundred seventy-five dollars (\$175) per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Sec. 4, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973.

Amendments

The 1973 amendment substituted references to the division of workmen's compensation for references to the industrial accident board; and increased the monthly amount specified near the end of the first sentence from \$158.50 to \$175.00.

71-1005. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the division. The application shall be in writing or reduced to writing in the manner and

upon the form prescribed by the division. The application form may be filled in and written by a person authorized by the division. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: Sec. 5, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "industrial accident board" throughout the section.

71-1006. Investigation of applications. Whenever the division under this chapter receives an application for a payment an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provision of this chapter, and such other information as may be required by the rules of the division. The investigation of such applicant shall be conducted by representatives of the division. The physicians or physician designated by the division as herein provided shall constitute an examining board for such clinical, pathological, X-ray and Roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

History: Sec. 6, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for "industrial accident board" throughout the section.

71-1007. Making payments. Upon the completion of such investigation the division shall determine whether or not the applicant is entitled to a payment under this chapter. The division shall then notify the applicant of its decision.

History: Sec. 7, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975.

Amendments

The 1975 amendment substituted "division" for references to the industrial accident board.

71-1008. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the division of workmen's compensation of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed one hundred seventy-five dollars (\$175) per month exclusive of any grants made by Congress.

History: Sec. 8, Part 9, Ch. 82, L. 1937 as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973.

Amendments

The 1973 amendment substituted "division of workmen's compensation" for "industrial accident board" in the first sentence; and increased the monthly amount specified in the second sentence from \$158.50 to \$175.00.

71-1010. Surviving spouse of person receiving silicosis payments—payments continue. Upon the death of a person receiving payments for silicosis under section 71-1003, R. C. M. 1947, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

History: En. 71-1010 by Sec. 1, Ch. 203, L. 1974.

Effective Date

Section 2 of Ch. 203, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

Title of Act

An act continuing payments for silicosis to a surviving spouse and providing an effective date.

71-1010.1. Prior surviving spouses eligible for silicosis payments. A person who otherwise is qualified to receive payments under section 71-1010, but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half (1/2) of those payments; provided however, a person is not eligible for these payments if her taxable income is sixty-eight hundred dollars (\$6,800) or more per year.

History: En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975.

Title of Act

An act making surviving spouses of silicotics eligible for payments if widowed prior to March 14, 1974.

CHAPTER 11—SALE OF REAL PROPERTY HELD BY PUBLIC WELFARE DEPARTMENT

(Repealed—Section 52, Chapter 121, Laws of 1974)

71-1101 to 71-1107. Repealed.

Repeal

Sections 71-1101 to 71-1107 (Secs. 1 to 7, Ch. 23, L. 1947), relating to the sale

of real property held by the public welfare department, were repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 12—PERMANENTLY AND TOTALLY DISABLED PERSONS IN NEED

(Repealed—Section 1, Chapter 210, Laws of 1974)

71-1201 to 71-1210. Repealed.

Repeal

Sections 71-1201 to 71-1210 (Secs. 1 to 10, Ch. 160, L. 1951; Secs. 9, 10, Ch. 71, L. 1957; Sec. 1, Ch. 104, L. 1959; Sec. 1, Ch. 6, L. 1961; Sec. 8, Ch. 261, L. 1971;

Sec. 1, Ch. 379, L. 1971; Secs. 49, 50, Ch. 121, L. 1974), relating to aid to the permanently and totally disabled, were repealed by Sec. 1, Ch. 210, Laws of 1974, effective March 14, 1974.

CHAPTER 13—PRIVILEGES OF BLIND AND PHYSICALLY DISABLED PERSONS

Section

71-1305. Use of white or metallic-colored canes restricted to blind—right to use of public ways—right of equal accommodations—access of blind to highways, public accommodations, common carriers.

71-1305.1. Access to housing accommodations.

71-1306. Right of blind person to be accompanied by guide dog in public places and in housing accommodations.

71-1307. Duty of pedestrian or driver approaching blind person.

71-1309. Penalty for violation.

71-1305. Use of white or metallic-colored canes restricted to blind—right to use of public ways—right of equal accommodations—access of blind to highways, public accommodations, common carriers. (1) No person, except those wholly or partially blind, shall carry or use on any street, highway or in any other public place, a cane or walking stick which is white or metallic in color, or white or metallic tipped with red.

(2) The blind and the visually handicapped have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(3) The blind and the visually handicapped are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, boats, or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975.

Amendments

The 1975 amendment inserted the sub-

section (1) designation; inserted "or metallic" after "white" in two places in subsection (1); and added subsections (2) and (3).

71-1305.1. Access to housing accommodations. (1) Blind persons and visually handicapped persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

(2) "Housing accommodation" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but does not include any single family residence the occupants of which furnish for compensation not more than one room therein.

(3) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind person or a visually handicapped person than for a person who is not so disabled.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977.

Amendments

The 1977 amendment deleted "rent, lease, or" before "compensation in this state" in subsection (1); deleted "subject to the conditions and limitations established by law and applicable alike to

all persons" from the end of subsection (1); deleted "any accommodations included within subsection (1) or" after "does not include" in the middle of subsection (2); deleted "rent, lease, or" before "furnish for compensation" near the end of subsection (2); and made minor changes in phraseology and punctuation.

71-1306. Right of blind person to be accompanied by guide dog in public places and in housing accommodations. (1) Every totally or partially blind person shall have the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places where the public are invited—hotels, motels, public conveyances, public eating places, and

places of amusement—without being charged extra for the guide dog; provided that he shall be liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind person who has a guide dog, or who obtains a guide dog, shall be entitled to full and equal access to all housing accommodations as provided in sections 64-306 (3) and 71-1310, R. C. M. 1947, and he shall not be required to pay extra compensation for such guide dog but shall be liable for any damage done to the premises by such a guide dog.

History: En. Sec. 4, Ch. 181, L. 1971;
amd. Sec. 2, Ch. 266, L. 1975.

Amendments

The 1975 amendment inserted the subsection (1) designation; and added subsection (2).

71-1307. Duty of pedestrian or driver approaching blind person. Any pedestrian who is not wholly or partially blind, or any driver of a vehicle who approaches or comes in contact with a person wholly or partially blind carrying a cane or walking stick predominately white or metallic in color or white tipped with red or being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of said blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to the person wholly or partially blind. Any driver or pedestrian who fails to take such precautions shall be liable in damages for any injury caused such pedestrian; provided that a totally or partially blind pedestrian not carrying such a cane or using a guide dog in any of the places, accommodations, or conveyances listed in section 71-1305 shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a guide dog in any such places, accommodations, or conveyances shall not be held to constitute nor be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971;
amd. Sec. 3, Ch. 266, L. 1975.

Amendments

The 1975 amendment added the second sentence.

71-1309. Penalty for violation. Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 71-1305, or otherwise interferes with the rights of a totally or partially blind or otherwise disabled person under section 71-1305, is guilty of a misdemeanor.

History: En. 71-1308 by Sec. 4, Ch. 266,
L. 1975.

1971, the compiler designated this section under the next sequential number.

Compiler's Notes

This section was originally enacted as section 71-1308. Since that section number had already been used by Ch. 181, Laws

Title of Act

An act to protect the rights and independence of blind persons; amending sections 71-1305, 71-1306, and 71-1307, R. C. M. 1947.

CHAPTER 14—SERVICES TO THE BLIND

Section

71-1401. Definitions.

71-1404. Administration.

71-1407. Gifts.

71-1401. Definitions. As used in this act the following definitions apply:

(1) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the state department to be necessary to compensate a blind individual for his employment handicap and to enable him to engage in a remunerative occupation including but not limited to medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.

(2) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the state department to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks.

(3) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap, including, but not limited to manual, preconditioning, prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(4) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(5) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(6) "Occupational licenses" means a license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(7) "Business licenses" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in a business.

(8) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.

(9) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose

visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees or who has other eye conditions which render vision equally defective or who has an eye condition which will cause blindness.

History: En. Sec. 1, Ch. 167, L. 1955; amd. Sec. 33, Ch. 121, L. 1974; amd. Sec. 37, Ch. 37, L. 1977.

Amendments

The 1974 amendment deleted definitions of "State department," "State board," "Administrator," and "Supervisor"; substituted "state department of social and

rehabilitation services" for "supervisor" in subdivisions (1) and (2); and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted "of social and rehabilitation services" after "state department" in subdivisions (1) and (2); and made minor changes in phraseology and punctuation.

71-1402, 71-1403. Repealed.

Repeal

Sections 71-1402 and 71-1403 (Secs. 2, 3, Ch. 167, L. 1955), relating to the powers

and duties of the supervisor of the program of services for the blind, were repealed by Sec. 52, Ch. 121, Laws of 1974.

71-1404. Administration. The state department shall provide the services authorized by this act to blind individuals determined by it to be eligible therefor and, in carrying out the purposes of this act the department may, among other things:

(1) Co-operate with other departments, agencies, and institutions, both public and private, in providing the services authorized by this act to blind individuals, in studying the problems involved therein, and in establishing, developing, and providing, in conformity with the purposes of this act, such programs, facilities and services as may be necessary or desirable;

(2) Enter into reciprocal agreements with other states to provide the services authorized by this act to residents of the states concerned;

(3) Conduct research and compile statistics relating to the provision of services to or the need of services of blind individuals;

(4) Provide supplementary services to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight whether or not he is blind, if he is otherwise qualified for services or training under this act, and if the supplementary services are recommended because of the findings of an ophthalmologist or optometric examination. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the department;

(5) Take other action necessary or appropriate to carry out this act.

History: En. Sec. 4, Ch. 167, L. 1955; amd. Sec. 34, Ch. 121, L. 1974; amd. Sec. 1, Ch. 237, L. 1974.

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 121 and once by Ch. 237. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

Amendments

Chapter 121, Laws of 1974, added the provision designated by the compiler as subdivision (5) and made minor changes in phraseology, punctuation, and style.

Chapter 237, Laws of 1974, added the

provision designated by the compiler as subdivision (4).

Effective Date

Section 2 of Ch. 237, Laws 1974 pro-

vided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

71-1406. Receipt and disbursement of federal funds.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "administrator."

71-1407. Gifts. The department shall accept and use gifts made unconditionally by will or otherwise for the purposes of this act. Gifts made under such conditions as in the judgment of the state department are proper and consistent with the provisions of this act may be so accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 7, Ch. 167, L. 1955; amd. Sec. 35, Ch. 121, L. 1974.

partment" for "administrator" in the first sentence and for "board" in the second sentence.

Amendments

The 1974 amendment substituted "de-

71-1408, 71-1409.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in these sections for "supervisor."

71-1410 to 71-1415. Repealed.

Repeal

Sections 71-1410 to 71-1415 (Secs. 10 to 12, 15 to 17, Ch. 167, L. 1955), relating to eligibility for services, nonassignability of maintenance, hearings, misuse of rec-

ords, saving clause, appropriation, and title of the services of the blind act, were repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 15—MEDICAL ASSISTANCE

Section

71-1516. Eligibility requirements.

71-1517. Amount, scope and duration of assistance.

71-1520. Investigation and determination of eligibility.

71-1524. Exclusion of lien.

71-1511. Provisions for administration.

Compiler's Notes

Sections 47 and 48, Ch. 121, Laws 1974, substituted "state department of social

and rehabilitation services" throughout this section for "state department of public welfare."

71-1513. Repealed.

Repeal

Section 71-1513 (Sec. 3, Ch. 325, L. 1967), relating to consultation by the de-

partment with council appointed by the governor, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-1515. Contracting with other agencies to process claims.

Compiler's Notes

Section 49, Ch. 121, Laws 1974, sub-

stituted "state department" in this section for "state welfare board."

Medicaid Reimbursement

The department has authority under this section and 71-1517 to contract with hospitals to reimburse them for "full and adequate costs" incurred by Medicaid patients and the department rather than the

federal government is the real party in interest under such contracts. *Montana Deaconess Hospital v. Department of Social and Rehabilitation Services*, — M —, 538 P 2d 1021.

71-1516. Eligibility requirements. Medical assistance shall be granted in behalf of all persons:

- (1) who reside in the state of Montana, including residents temporarily absent from the state; and
- (2) who meet any of the following requirements:
 - (a) receive all or part of their income from the federally-aided public assistance programs: old-age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled;
 - (b) upon application, would be eligible for financial assistance under any one of the federally-aided programs referred to above;
 - (c) would be entitled to financial assistance under one of the federally-aided categories except that they do not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;
 - (d) are in medical institutions and if they were no longer in such institution would be eligible for financial assistance under one of the above programs;
 - (e) are under 21 years of age and meet the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance;
 - (f) are under 21 years of age and in foster care under the supervision of the state;
 - (g) have income less than 133 1/3% of the amounts specified as maximum income levels for federally-aided categories of assistance;
 - (h) are under 21 years of age and medically needy, as defined by the department of social and rehabilitation services; or
 - (i) are under 21 years of age, were in foster care under the supervision of the state, and have been adopted as "hard-to-place" children.

History: En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971; amd. Sec. 1, Ch. 20, L. 1973; amd. Sec. 2, Ch. 277, L. 1973; amd. Sec. 38, Ch. 37, L. 1977.

Amendments

Chapter 20, Laws of 1973, added subdivisions (7) and (8); and made a minor change in phraseology.

Chapter 277, Laws of 1973, added as sub-

division (7) the language shown as subdivision (9) above.

The 1977 amendment inserted subdivision designations (1) and (2) in the former introductory phrase; redesignated former subdivisions (1) through (9) as subdivisions (2)(a) through (2)(i); and made minor changes in phraseology, punctuation and style.

71-1517. Amount, scope and duration of assistance. The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the state department. Payments on behalf of persons in state operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available. However, if available funds are not sufficient to provide an adequate medical care program for

all eligible persons, first priority shall be given to those eligible persons enumerated in section 1, subsections (1) through (6) [71-1516 (1) to (6)] of this act and in such event the state department shall by appropriate rules and regulations have the right to limit, reduce, or otherwise curtail the amount, scope, and duration of the medical and remedial care and services made available to those individuals enumerated in section 1, subsections (7) and (8) [71-1516 (7) and (8)] of this act to the extent necessary to assure the implementation of the established priorities. For the purpose of determining eligibility and amount of assistance to be granted to those individuals covered in section 1, subsections (7) and (8) [71-1516 (7) and (8)] of this act, the state department shall establish a maintenance standard.

History: En. Sec. 7, Ch. 325, L. 1967; amd. Sec. 3, Ch. 261, L. 1971; amd. Sec. 2, Ch. 20, L. 1973.

Amendments

The 1973 amendment added the fourth and fifth sentences.

71-1519. Repealed.

Repeal

Section 71-1519 (Sec. 9, Ch. 325, L. 1967; Sec. 5, Ch. 261, L. 1971), relating

to the county share of medical payments paid by the state, was repealed by Sec. 3, Ch. 279, Laws of 1974.

71-1520. Investigation and determination of eligibility. (a) The county department shall promptly investigate and determine the eligibility of each applicant under this act in accordance with the rules and regulations of the state department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this act, and aid shall be furnished promptly to eligible persons. The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department. Each applicant shall receive written notice of the decision concerning his application and right of appeal shall be secured to the applicant under the procedures of section 71-223.

(b) Provided, however, the county departments of public welfare and the state department of social and rehabilitation services are hereby authorized to accept the federal social security administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying such eligible individuals to receive medical assistance under this act.

History: En. Sec. 10, Ch. 325, L. 1967; amd. Sec. 1, Ch. 181, L. 1974; amd. Sec. 1, Ch. 327, L. 1977.

Amendments

The 1974 amendment inserted the subsection designation (a) and added subsection (b).

The 1977 amendment deleted the last sentence of subsection (b) which read

"Where a federal determination has been made, the county will not investigate further, nor review the determination;" and made a minor change in style.

Effective Date

Section 2 of Ch. 181, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 12, 1974.

71-1522. Repealed.

Repeal

Section 71-1522 (Sec. 12, Ch. 325, L. 1967), relating to change of residence of

a person receiving medical assistance, was repealed by Sec. 3, Ch. 279, Laws of 1974.

71-1523. Repealed.**Repeal**

Section 71-1523 (Sec. 13, Ch. 325, L. 1967), relating to confidentiality of rec-

ords, was repealed by Sec. 52, Ch. 121, Laws of 1974.

71-1524. Exclusion of lien. No applicant hereunder may be required to execute an agreement for lien on his real property. No lien may be imposed against the property of an individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of the individual). There may be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received the assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 18 or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of an individual. To the extent necessary for reimbursement of medical assistance paid to an individual, the state department is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses, as provided in 71-241.1. Recoveries shall be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this act are hereby extended to provide for the recovery of all medical assistance paid under 71-1511 through 71-1524 and likewise to all medical aid to the aged assistance paid by the state department during the period of time July 1, 1965, through June 30, 1967.

History: En. Sec. 14, Ch. 325, L. 1967; amd. Sec. 1, Ch. 249, L. 1969; amd. Sec. 1, Ch. 279, L. 1974; amd. Sec. 5, Ch. 379, L. 1977.

Amendments

The 1974 amendment substituted "age eighteen (18)" for "age twenty-one (21)" in the third sentence; substituted "and

the state" for "and the county involved" in the fourth sentence; and inserted the fifth sentence pertaining to proration of recovery to reimburse the county share of participation.

The 1977 amendment inserted the fourth sentence; and made minor changes in phraseology and style.

CHAPTER 16—ECONOMIC OPPORTUNITY AND POVERTY RELIEF**71-1601. Purpose and intent of act.****Compiler's Notes**

Executive Reorganization Order 4-71, signed Aug. 30, 1972 and effective Sept. 1, 1972, vested responsibility for adminis-

tration of this program in the economic opportunity division, department of intergovernmental relations.

CHAPTER 18—SUBSIDIARY ADOPTION ACT OF 1977**Section**

- 71-1806. Short title.
- 71-1807. Purpose.
- 71-1808. Definitions.
- 71-1809. Power and duties of the department.
- 71-1810. Certification and eligibility.
- 71-1811. Subsidy agreement.
- 71-1812. Subsidized adoption program limited.

71-1801 to 71-1805. Repealed.**Repeal**

Sections 71-1801 to 71-1805 (Secs. 1, 3 to 6, Ch. 277, L. 1973), relating to adoption

of hard-to-place children, was repealed by Sec. 10, Ch. 434, Laws 1977.

71-1806. Short title. This act may be cited as "The Subsidized Adoption Act of 1977".

History: En. 71-1806 by Sec. 1, Ch. 434, L. 1977.

sidies for the adoption of hard-to-place children; and repealing sections 71-1801 through 71-1805, R. C. M. 1947.

Title of Act

An act to establish a program of sub-

71-1807. Purpose. The purpose of this act is to encourage and promote the adoption of children who are hard to place by providing information and assistance in completing the adoption process and financial assistance when necessary to ensure the health and welfare of the hard-to-place child.

History: En. 71-1807 by Sec. 2, Ch. 434, L. 1977.

71-1808. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Hard-to-place child" means a minor as defined by 64-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:

- (a) physical or mental disease or disability;
- (b) recognized high risk of physical or mental disease or disability; or
- (c) sibling relationship to another child who is eligible for adoption.

History: En. 71-1808 by Sec. 3, Ch. 434, L. 1977.

71-1809. Power and duties of the department. (1) The department shall establish, administer, and regulate a continuing program of subsidized adoption.

(2) The department shall keep such records as are necessary to evaluate the program in terms of the number of children adopted under the program, the cost of the program, and any other pertinent information.

(3) The department may adopt rules necessary for the proper administration of this act.

History: En. 71-1809 by Sec. 4, Ch. 434, L. 1977.

71-1810. Certification and eligibility. (1) Whenever the conditions of 71-1808 are found to exist and the foster parents seek to adopt the child, the child shall be certified as hard to place.

(2) In all other cases in which the conditions of 71-1808 are found to exist and after reasonable efforts have been made and no appropriate

adoptive family without the use of subsidy has been found for a child, the department shall certify the child as hard to place.

(3) If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of inability to place the child for adoption due to any of the conditions specified in 71-1808. The agency shall present evidence that reasonable efforts have been made to place the child without subsidy, such as recruitment of potential parents, use of adoption resource exchanges, and referral to appropriate specialized adoption agencies. Upon such a showing, the department shall certify the child as hard to place.

(4) Any family which applies for an adoption subsidy and which is approved by the department as a suitable adoptive family and which is or may be financially unable to meet the special needs of a hard-to-place child as determined by the department and which adopts a hard-to-place child is eligible for subsidy regardless of the domicile or residence of the family at the time of application for adoption, placement, legal decree of adoption, or thereafter.

History: En. 71-1810 by Sec. 5, Ch. 434,
L. 1977.

71-1811. Subsidy agreement. (1) When parents are approved for adoption of a child certified as hard to place and before the final decree of adoption is issued, there shall be a written agreement between the family entering into the subsidized adoption and the department. The terms of the adoption subsidy agreement may commence with the adoption placement or at an appropriate time after the adoption decree.

(2) The amount and duration and scope of the subsidy may vary with the special needs of the child as well as the availability of other resources, including those of the adoptive parents, to meet these needs. The subsidy may be for services only or for the money payments, but in no case may the amount of the subsidy exceed: (a) in the case of a sibling relationship, that which would be allowable for such child under foster family care; or (b) in the case of a medical subsidy, the reasonable fee for the services rendered not to exceed the amount of \$2,600 annually.

(3) The subsidy agreement shall continue in accordance with its terms until the child reaches majority or for as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues. Termination or modification of the subsidy agreement may be requested by the adoptive parents or the department at any time.

(4) When subsidies are for more than 1 year, the adoptive parents shall present an annual sworn certificate that the adopted child remains under their care and the condition that caused the child to be certified continues to exist.

(5) All records regarding subsidized adoption shall be confidential and may be disclosed only in accordance with the provisions of 61-209.

History: En. 71-1811 by Sec. 6, Ch. 434,
L. 1977.

71-1812. Subsidized adoption program limited. In providing for the subsidization of adoption as provided for in 71-1806 through 71-1812, the department may not expend or otherwise obligate funds in excess of those specifically appropriated for that purpose.

History: En. 71-1812 by Sec. 7, Ch. 434, L. 1977.

Saving Clause

Section 8 of Ch. 434, Laws 1977 read "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

"If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 9 of Ch. 434, Laws 1977 read

Repealing Clause

Section 10 of Ch. 434, Laws 1977 read "Sections 71-1801 through 71-1805, R. C. M. 1947, are repealed."

CHAPTER 19—PROTECTIVE SERVICES FOR DEVELOPMENTALLY DISABLED

Section

- 71-1901. Definitions.
- 71-1902. Legislative findings—rules and regulations—powers in establishment of system.
- 71-1903. Application for protective services.
- 71-1904. Petition in district court to make developmentally disabled person ward of department—contents—hearing—order—disabilities imposed.
- 71-1905. Protective and supportive services provided.
- 71-1906. Department as conservator of small estate of person adjudicated developmentally disabled.
- 71-1907. Manner of providing protective services.
- 71-1908. Bond not required—exception.
- 71-1909. Ward to pay for services received if able—accounting by department—claims for state reimbursement.
- 71-1910. Annual report by field staff to director—report by director to legislature.
- 71-1911. Hearing to determine whether appointment of department to be continued.
- 71-1912. Clerk of court to keep records separate—available to public.
- 71-1913. Acceptance and expenditure of donated funds.
- 77-1914. Short title.
- 71-1915. Definitions.
- 71-1916. Purpose.
- 71-1917. Duties of department.
- 71-1918. Departmental authority.
- 71-1919. Annual reports.

71-1901. Definitions. As used in this act, unless the context otherwise requires:

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(3) "Ward" means a person for whom protective services are rendered pursuant to the provisions of this act.

(4) "Respondent" means a person in whose interest proceedings are brought under this act.

History: En. Sec. 1, Ch. 508, L. 1973.

Title of Act

An act establishing a program of protective services for the mentally disabled.

71-1902. Legislative findings—rules and regulations—powers in establishment of system. (1) In recognition of the need to provide supervision

and protection from exploitation for the developmentally disabled, and in acknowledgment of the desirability of providing such services outside the state institutions, the legislative assembly hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this act for developmentally disabled persons.

(2) The director of the department shall adopt rules and regulations for the administration of this article. The department shall develop a state-wide system of protective service in accordance with regulations and standards established by the department with respect to this program, the department may:

- (a) provide direct services;
- (b) enter into a contract with any responsible agency, public or private, for provision of protective service by the agency;
- (c) accept appointment by any district court as guardian, trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person.

History: En. Sec. 2, Ch. 508, L. 1973.

71-1903. Application for protective services. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person when the department determines that such person is a developmentally disabled person who would benefit from services provided in this act and that the department is currently able to supply services to such person. A parent may name the department as guardian of the developmentally disabled person in his will. A parent may also name the department as guardian or trustee of the developmentally disabled person to assume such duties during the parents' lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward.

(2) Application for protective services under this act shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules of the department. The rules of the department shall simplify the application process in order that protective services may be furnished as soon as possible. Adequate safeguards shall be established by the department to insure that only eligible persons receive protective services under this act. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services.

History: En. Sec. 3, Ch. 508, L. 1973;
amd. Sec. 39, Ch. 37, L. 1977.

Amendments

The 1977 amendment substituted "developmentally disabled person" for "mentally

disabled person" in the second and third sentences of subsection (1); deleted "and regulations" after "rules" in the second and third sentences of subsection (2); and made minor changes in phraseology and punctuation.

71-1904. Petition in district court to make developmentally disabled person ward of department—contents—hearing—order—disabilities imposed. (1) Any developmentally disabled person may be made a ward of the department by a judicial proceeding which shall be initiated when any reputable person, including the potential ward, or the department, shall file in the district court of the county in which the respondent resides or is physically present, a verified petition alleging that the respondent is a developmentally disabled person, describing the nature and extent of the respondent's disability, and alleging that it will be in the best interests of the respondent that he be made a ward of the department. The petition shall be accompanied by a report of the findings of an evaluation team composed of, but not limited to, a physician, a psychologist, and a social worker, and expressing the belief that the respondent is developmentally disabled to an extent which would cause the respondent to benefit from the protective services provided for in this act.

(2) Upon the filing of such verified petition and team evaluation statement, the court shall issue an order fixing the time and place of a hearing on such petition, which time shall be no earlier than seven (7) days nor later than fourteen (14) days after the filing thereof. Such order shall appoint an attorney for the respondent, whose duty shall be to make such investigation as is necessary to protect the rights of the respondent and to attend all hearings in the matter. Such order also shall advise the respondent of his right to appear at the hearing, and shall give the address and telephone number of the attorney. Personal service shall be made on the respondent, the department, the county attorney, and attorney at least five (5) days prior to the hearing date. The department, the county attorney, and the attorney may waive service.

(3) Upon hearing, the petitioner shall present the evidence to the court. When the court is fully advised, it shall determine whether the respondent is a developmentally disabled person who would benefit from the protective services provided for in this act and whether it is in the best interest of the respondent that he be made a ward of the department and, if it is so found, the court shall enter an order that the respondent is made the ward of the department; otherwise, the petition shall be dismissed.

(4) In any order making the respondent a ward of the department, the court shall specify any legal disabilities to be imposed upon the ward. The order may contain, where appropriate, specific provisions concerning the right to operate a motor vehicle, the right to enter into contracts, or any other civil, political, personal, or property right. No person who becomes a ward of the department shall lose any legal right by reason thereof except as provided in this subsection (4).

(5) Every proceeding under this act shall be civil in nature and shall be entitled "In the interest of _____, respondent," or "In the interest of _____, ward," as the case may be.

History: En. Sec. 4, Ch. 508, L. 1973.

71-1905. Protective and supportive services provided. (1) The department shall provide, in the manner set forth, for each of its wards, those protective and supportive services which the department believes necessary to help the ward function, to the extent of his capabilities, as an independent, self-sufficient member of society. Services under this act may include, but shall not be limited to, assistance in obtaining:

- (a) housing, clothing, and food;
- (b) education and training for living in society and, where possible, for employment;
- (c) employment;
- (d) financial benefits to which the ward may be entitled;
- (e) medical services and supplies;
- (f) necessary legal services;
- (g) marshaling, protection, and insurance of the ward's property;
- (h) financial advice and services;
- (i) participation in cultural and recreational activities.

(2) Services under this act also may include, but shall not be limited to, assistance in preventing exploitation of the ward by others, and in preventing injury to the ward and injury by the ward to others.

History: En. Sec. 5, Ch. 508, L. 1973.

71-1906. Department as conservator of small estate of person adjudicated developmentally disabled. The department may be appointed as conservator of the estate of any person adjudicated developmentally disabled, if the department is providing protective services for such person, and if it shall appear to the court that the value of the assets of such person does not exceed ten thousand dollars (\$10,000), and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report annually to the court which appointed it on the discharge of its duties as conservator of an estate under this section and shall otherwise be subject to the requirements of a general guardian.

History: En. Sec. 6, Ch. 508, L. 1973.

71-1907. Manner of providing protective services. The department shall engage in the direct provision of protective services to wards. If a service comprehended by this act is provided by persons or agencies acting under other state or federal laws, the department shall co-operate with such persons or agencies in obtaining such services for wards of the department. If necessary services cannot be obtained without charge, the department may purchase such services from individuals, voluntary agencies, community centers, or clinics and, to the extent not prohibited by law, from other state agencies.

History: En. Sec. 7, Ch. 508, L. 1973.

71-1908. Bond not required—exception. The department shall not be required to post bond in proceedings under this act unless serving as a court-appointed conservator as provided in section 6 [71-1906] in which case it shall furnish such bond as required by law.

History: En. Sec. 8, Ch. 508, L. 1973.

71-1909. Ward to pay for services received if able—accounting by department—claims for state reimbursement. (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or conservator of such ward, or, if the governing instrument permits, the trustee of such ward, to pay all reasonable and proper costs of proceedings in the interest of such ward under this act, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward, or to reimburse the department for funds expended for such costs or services.

Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to three per cent (3%) of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year and the court by which the department was appointed shall conduct a hearing to determine the propriety of any charge or charges to a ward. All of the provisions of subsections (2) and (3) of section 4 [71-1904 (2) and (3)] concerning notice and hearings shall apply to hearings under this section. Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(2) Except as provided in subsection (1) of this section, the net cost of proceedings under this act and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify to the department of administration the amount. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration.

History: En. Sec. 9, Ch. 508, L. 1973.

71-1910. Annual report by field staff to director—report by director to legislature. (1) With respect to each ward, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the ward, including specifically an accounting for any transactions with property of the ward, other than as a court-appointed conservator, the current condition of the ward, and the recommendations of the department as to whether its services should continue or be terminated, and whether other proceedings should be instituted. If the department is serving pursuant to court order under section 4 [71-1904], a copy of such report also shall be filed with such court.

(2) No later than December 31, 1974, the director of the department shall present a complete report to the legislature on the program authorized by this act, with special emphasis on an evaluation of the success of the program, all relevant expenses, and projections of the cost of extending the

services provided for in this act to all eligible developmentally disabled persons in this state.

History: En. Sec. 10, Ch. 508, L. 1973.

71-1911. Hearing to determine whether appointment of department to be continued. Upon the written request of the ward, the department, or any other reputable person, or upon its own motion, the appointing court shall hold a hearing to determine whether the appointment of the department should be terminated or continued. All of the provisions of subsections (2) and (3) of section 4 [71-1904 (2) and (3)] concerning notice and hearing shall apply to hearings under this section. No ward may request such hearing more frequently than at six (6) month intervals. Upon such hearing, the court shall enter its order continuing or terminating the appointment of the department.

History: En. Sec. 11, Ch. 508, L. 1973.

71-1912. Clerk of court to keep records separate—available to public. The clerk of the district or probate court shall maintain records and papers in proceedings under this act separately. The information contained in such records shall be available to public officials, attorneys, and persons having bona fide business dealings with the respondents concerned.

History: En. Sec. 12, Ch. 508, L. 1973.

71-1913. Acceptance and expenditure of donated funds. The department may accept and expend grants, gifts, and legacies of money and other property, including federal grants, on behalf of the state of Montana, in furtherance of the purposes of this act, subject to any reasonable and proper conditions any donor may attach which are acceptable to the executive director of the department and which do not violate the constitution, laws or public policy of the state of Montana.

History: En. Sec. 13, Ch. 508, L. 1973.

Emergency Clause

Section 14 of Ch. 508, Laws 1973 read

"The legislature hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety."

71-1914. Short title. This act may be cited as the "Protective Services Act for Aged Persons or Disabled Adults."

History: En. 71-1914 by Sec. 1, Ch. 232, L. 1975.

Title of Act

An act to authorize the department of

social and rehabilitation services to offer protective services to aged persons or disabled adults in need of such services; and provide a delayed effective date.

71-1915. Definitions. As used in this act:

(1) "Department" means the department of social and rehabilitation services.

(2) "Aged person" means an aged person as defined by the department.

(3) "Disabled adult" means a person eighteen (18) years of age or over who is defined by the department as disabled but not developmentally disabled.

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department.

History: En. 71-1915 by Sec. 2, Ch. 232,
L. 1975.

71-1916. Purpose. To ensure that aged persons or disabled adults in the state of Montana be afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX "Social Services Amendments of 1972," this legislature declares the department to be recognized as the public agency responsible for providing those services.

History: En. 71-1916 by Sec. 3, Ch. 232,
L. 1975.

71-1917. Duties of department. The department shall be responsible for acting on requests for protective services from aged persons or disabled adults or from relatives, friends, or other reputable persons requesting those services on behalf of an aged person or disabled adult.

History: En. 71-1917 by Sec. 4, Ch. 232,
L. 1975.

71-1918. Departmental authority. The department may implement a program for protective services by establishing appropriate rules and regulations which are not inconsistent with the department of social and rehabilitation services' activities.

History: En. 71-1918 by Sec. 5, Ch. 232,
L. 1975.

71-1919. Annual reports. The department shall make annual reports on the number of people served by this act and the type of protective services made available to the aged persons and disabled adults of Montana.

History: En. 71-1919 by Sec. 6, Ch. 232,
L. 1975.

Effective Date

Section 7 of Ch. 232, Laws 1975 read
"This act shall become effective October
1, 1975."

CHAPTER 20—COMMUNITY HOMES FOR DEVELOPMENTALLY DISABLED

Section

71-2001. Purposes.

71-2002. Community home for developmentally disabled—definition—limitation on number of residents.

71-2003. Nonprofit corporations and associations authorized—establishment of homes by department.

71-2004. Department contracts with nonprofit corporations—governmental units providing for community homes.

71-2005. Local control of homes subject to departmental rules.

71-2006. Federal aid.

71-2007. Standards, rules and regulations for licensing.

71-2001. Purposes. The legislature, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible,

and in order to reduce the need for care in existing state institutions, establishes by this act a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family-oriented residences and establishes a program to provide such homes through local nonprofit corporations.

History: En. Sec. 1, Ch. 373, L. 1973; amd. Sec. 1, Ch. 149, L. 1974; amd. Sec. 1, Ch. 385, L. 1975.

Title of Act

An act providing for nonprofit organizations to establish community homes for the developmentally disabled, and providing authority to the department of institutions to make rules and regulations for the operation of the homes.

Amendments

The 1974 amendment deleted "through

local nonprofit corporations" at the end of the section.

The 1975 amendment added "through local nonprofit corporations" at the end of the section; and made a minor change in phraseology.

Constitutionality

This section is constitutional within purview of 1972 Montana constitution and supersedes such city ordinances that restrict use of residential areas to one-family dwellings only. State ex rel. Thelen v. City of Missoula, — M —, 543 P 2d 173.

71-2002. Community home for developmentally disabled—definition—limitation on number of residents. A community home for the developmentally disabled is a family-oriented residence or home designed to provide facilities for two (2) to eight (8) developmentally disabled persons established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight (8) in such a community home, except that the department may grant written approval for more than eight (8), but not more than twelve (12) persons.

History: En. Sec. 2, Ch. 373, L. 1973.

71-2003. Nonprofit corporations and associations authorized—establishment of homes by department. (1) Nonprofit corporations or associations in any community may be formed or organized for the purposes of establishing a community home or homes for the developmentally disabled under this act and to receive services, facilities, and funds as the department of social and rehabilitation services and other governmental units may be authorized by law to provide.

(2) The department of social and rehabilitation services may also establish a community home or homes for the developmentally disabled under this act and receive services, facilities, and funds as the department of social and rehabilitation services and other governmental units may be authorized by law to provide.

History: En. Sec. 3, Ch. 373, L. 1973; amd. Sec. 2, Ch. 149, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of social and rehabilitation services" for "department of institutions" throughout the section.

71-2004. Department contracts with nonprofit corporations—governmental units providing for community homes. (1) The department of social and rehabilitation services may contract with nonprofit corporations or associations to provide facilities and services for the developmentally

disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are authorized, at their own expense, to provide funds, materials, facilities, and services for community homes for the developmentally disabled.

History: En. Sec. 4, Ch. 373, L. 1973; amd. Sec. 3, Ch. 149, L. 1974; amd. Sec. 2, Ch. 385, L. 1975.

Amendments

The 1974 amendment substituted "The department of social and rehabilitation services" for "The department of institutions" at the beginning of subsection (1) and inserted "or any other home licensed

by the department of social and rehabilitation services" following "associations" in subsection (1).

The 1975 amendment deleted "or any other home licensed by the department of social and rehabilitation services" after "corporations or associations" in subsection (1); and made a minor change in phraseology.

71-2005. Local control of homes subject to departmental rules. Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating said community homes are authorized to establish homes and programs they believe in the best interest of their home; provided, however that the director of the department of social and rehabilitation services shall adopt reasonable rules, regulations, and standards to carry out the administration and purposes of this act.

History: En. Sec. 5, Ch. 373, L. 1973; amd. Sec. 4, Ch. 149, L. 1974.

Amendments

The 1974 amendment substituted "may be under local control" for "shall be un-

der local control" near the beginning of the section and substituted "department of social and rehabilitation services" for "director of the department of institutions."

71-2006. Federal aid. The department of social and rehabilitation services is authorized to apply for and receive federal aid money or other assistance which may be available for programs in the nature of the program created by this act.

History: En. Sec. 6, Ch. 373, L. 1973; amd. Sec. 5, Ch. 149, L. 1974.

Amendments

The 1974 amendment substituted "the

department of social and rehabilitation services" for "The department of institutions" at the beginning of the section.

71-2007. Standards, rules and regulations for licensing. The state department of health and environmental sciences shall promulgate and adopt standards, rules and regulations for the licensing of community homes for the developmentally disabled to ensure the health and safety of the residents of such homes.

History: En. Sec. 7, Ch. 373, L. 1973.

Separability Clause

Section 8 of Ch. 373, Laws 1973 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

CHAPTER 21—VOCATIONAL REHABILITATION AND EDUCATION

Section

- 71-2101. Definitions.
- 71-2102. State department duties.
- 71-2103. Co-operation with federal government.
- 71-2104. Receipt and disbursement of rehabilitation funds.
- 71-2105. Eligibility for vocational rehabilitation.
- 71-2106. Hearings.
- 71-2107. Limitation of political activity.
- 71-2108. Separability.

71-2101. Definitions. As used in this chapter:

(1) "Employment handicap" means a physical or mental condition which constitutes, contributes to or if not corrected, will probably result in an obstruction to occupational performance;

(2) "Disabled individual" means a person with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist;

(3) "Vocational rehabilitation" and "vocational rehabilitation services" mean services provided directly or through public or private instrumentalities, found by the state department of social and rehabilitation services to be necessary to compensate a disabled individual for his employment handicap, and to enable him in so far as possible to engage in a remunerative occupation including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, and training books and materials, facilities for groups of handicapped, service to family members and follow-up service;

(4) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his employment handicap including, but not limited to, manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities;

(5) "Physical restoration" means any medical, surgical or therapeutic treatment necessary to correct or substantially reduce a disabled individual's employment handicap within a reasonable length of time including, but not limited to, medical, psychiatric, dental and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions, (except medical care for acute conditions during the course of a rehabilitation plan which, if not corrected, would constitute a hazard to plan completion);

(6) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ;

(7) "Occupational licenses" means a license, permit or other written authority required by any governmental unit to be obtained in order to engage in an occupation;

(8) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation;

(9) "Regulations" means regulations made by the state department;

(10) "Rehabilitation plan" means a plan for providing services that will render a disabled individual employable and is jointly developed by the client and the state department.

History: En. Sec. 1, Ch. 74, L. 1947; amd. Sec. 1, Ch. 218, L. 1959; amd. Sec. 1, Ch. 53, L. 1961; amd. Sec. 1, Ch. 192, L. 1971; Sec. 41-801, R. C. M. 1947; amd. and redes. 71-1801 by Sec. 10, Ch. 121, L. 1974.

Compiler's Notes

The Vocational Rehabilitation Act of Montana, originally enacted as sections 41-801 to 41-815, was renumbered by the Laws of 1974 as sections 71-1801 to 71-1808. Since those section numbers were already in use, the compiler renumbered the sections to appear as chapter 21.

Amendments

The 1971 amendment substituted "with an impairment of a physical or mental nature that can be diagnosed by a physician or appropriate specialist" for "who has a substantial employment handicap"

at the end of the definition "Disabled individual"; added facilities for groups of handicapped, service to family members and follow-up service" at the end of definition of "Vocational rehabilitation"; deleted "not to exceed ninety (90) days" following "hospital care" in the definition of "Physical restoration"; added the exception at the end of the definition of "Physical restoration"; and added the definition of "Rehabilitation plan."

The 1974 amendment renumbered this section; substituted "chapter" for "act" in the introductory sentence; deleted definitions of "State board," "Division," and "Director"; substituted "state department of social and rehabilitation services" for "director" in subdivision (3); substituted "the state department" for "this division" in subdivision (10); and made minor changes in phraseology, punctuation and style.

71-2102. State department duties. The state department:

(1) Shall adopt rules governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for vocational rehabilitation services, procedures for fair hearings and any other rules necessary to carry out this act;

(2) Except as otherwise provided by law, shall provide vocational rehabilitation services to eligible disabled individuals;

(3) Shall take any other action it considers necessary or appropriate to carry out the purposes of this act;

(4) May co-operate with other agencies and institutions, both public and private, in providing for vocational rehabilitation of disabled individuals, in studying the problems involved in vocational rehabilitation, and establishing, developing, and providing necessary programs, facilities, and services;

(5) May conduct research and compile statistics relating to the vocational rehabilitation of disabled individuals;

(6) May accept and use gifts to carry out this chapter. Gifts made under conditions which the department considers proper and consistent with this chapter may be accepted, and shall be held, invested, reinvested, and used in accordance with the conditions of the gift.

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969; Sec. 41-803, R. C. M. 1947; amd. and redes. 71-1802 by Sec. 11, Ch. 121, L. 1974.

Amendments

The 1969 amendment rewrote a provi-

sion pertaining to a duty of the director to prepare and submit reports to the state board and to the governor.

The 1974 amendment renumbered and rewrote this section which listed the duties of the director of the division of vocational rehabilitation.

71-2103. Co-operation with federal government. The state department shall co-operate, pursuant to agreements, with the federal government in carrying out the purposes of any federal statutes, pertaining to rehabilitation and may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

History: En. Sec. 5, Ch. 74, L. 1947; amd. Sec. 2, Ch. 218, L. 1959; amd. Sec. 5, Ch. 53, L. 1961; Sec. 41-805, R. C. M. 1947; amd. and redes. 71-1803 by Sec. 12, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "state department" for "state board, through the division"; and made minor changes in phraseology.

71-2104. Receipt and disbursement of rehabilitation funds. The state treasurer is the custodian of all funds received from the federal government for the purpose of carrying out any federal statutes pertaining to rehabilitation. The state treasurer shall make disbursements from such funds and from all state funds available for rehabilitation purposes upon certification of the state department.

History: En. Sec. 6, Ch. 74, L. 1947; amd. Sec. 3, Ch. 218, L. 1959; Sec. 41-806, R. C. M. 1947; amd. and redes. 71-1804 by Sec. 13, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "certification of the state department" for "certification in the manner provided in section 41-803 (e)"; and made minor changes in phraseology.

71-2105. Eligibility for vocational rehabilitation. Vocational rehabilitation services shall be provided to any disabled individual (1) who is in the state at the time of filing his application therefor and whose vocational rehabilitation, the state department determines after full investigation, can be satisfactorily achieved, or (2) who is eligible therefor under the terms of an agreement with another state or with the federal government. Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the state department, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

- (a) Physical restoration;
- (b) Transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;
- (c) Occupational licenses;
- (d) Customary occupational tools and equipment;
- (e) Maintenance;
- (f) Training books and materials.

History: En. Sec. 8, Ch. 74, L. 1947; amd. Sec. 3, Ch. 192, L. 1971; Sec. 41-808, R. C. M. 1947; amd. and redes. 71-1805 by Sec. 14, Ch. 121, L. 1974.

Amendments

The 1971 amendment substituted "in the state" for "a resident of the state" in clause (1).

The 1974 amendment renumbered this section; substituted "state department" for "department" in clause (2); and made minor changes in phraseology.

71-2106. Hearings. An individual applying for or receiving vocational rehabilitation who is aggrieved by any action or inaction of the state department is entitled, in accordance with regulations, to a fair hearing by the board of social and rehabilitation appeals.

History: En. Sec. 10, Ch. 74, L. 1947; amd. Sec. 4, Ch. 192, L. 1971; Sec. 41-810, R. C. M. 1947; amd. and redes. 71-1803 by Sec. 15, Ch. 121, L. 1974.

Amendments

The 1971 amendment substituted "division" for "bureau."

The 1974 amendment renumbered this section; substituted "state department" for "division"; substituted "board of social and rehabilitation appeals" for "state board"; and made minor changes in phraseology.

71-2107. Limitation of political activity. An officer or employee engaged in the administration of the vocational rehabilitation program may not use his official authority or influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the result thereof or for any partisan political purpose. Any such officer or employee may not take any active part in the management of political campaigns or participate in any political activity, however he may vote as he pleases and express his opinions as a citizen on all subjects. Any such officer or employee may not solicit or receive, nor may any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose. An officer or employee violating this provision is subject to discharge or suspension.

History: En. Sec. 12, Ch. 74, L. 1947; Sec. 41-812, R. C. M. 1947; amd. and redes. 71-1807 by Sec. 16, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section and made minor changes in phraseology.

71-2108. Separability. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of the provision to other persons or circumstances is not affected thereby.

History: En. Sec. 14, Ch. 74, L. 1947; Sec. 41-813, R. C. M. 1947; amd. and redes. 71-1808 by Sec. 17, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "chapter" for "act"; and made minor changes in phraseology.

CHAPTER 22—VETERANS' WELFARE

Section

- 71-2201. Definition.
- 71-2202. Duty of board.
- 71-2203. Acknowledgments—officers.
- 71-2204. Aid to be rendered by state, county and municipal officers.
- 71-2205. Acceptance of money for service forbidden.
- 71-2206. Board may accept federal funds.
- 71-2207. Contracts for reimbursing board authorized.

71-2201. Definition. Unless the context requires otherwise, in this chapter, "board" means the board of veterans' affairs provided for in section 82A-1905.

History: En. 71-1901 by Sec. 36, Ch. 121, L. 1974.

Compiler's Notes

The sections of this chapter, formerly

secs. 77-1002 to 77-1010, were renumbered by the Laws of 1974 as secs. 71-1902 to 71-1907. Since those section numbers were already in use, the compiler renumbered the sections to appear as chapter 22.

71-2202. Duty of board. The board shall establish a state-wide service for discharged veterans and their families; actively co-operate with state and federal agencies having to do with the affairs of veterans and their families; and promote the general welfare of all veterans and their families. Employees of the board must be residents of this state. Whenever possible all employees of the board shall have served in the military forces of the United States during World War I, World War II, the Korean War, or the Vietnam Conflict, and shall have been honorably discharged therefrom; preference for employment shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945; amd. Sec. 1, Ch. 92, L. 1971; Sec. 77-1002, R. C. M. 1947; amd. and redes. 71-1902 by Sec. 37, Ch. 121, L. 1974; amd. Sec. 39, Ch. 535, L. 1975.

Amendments

The 1971 amendment added "the Korean War, or the Vietnam Conflict" after "World War II" throughout the section.

The 1974 amendment renumbered this section; substituted "board" for "commission" in two places; deleted part of the second sentence relating to employment of a director, service officers, and

other personnel, and to establishing a state headquarters and other offices; substituted "employment" for "all appointments" at the end of the third sentence; and made minor changes in phraseology.

The 1975 amendment substituted "Whenever possible all employees" for "All male employees" at the beginning of the third sentence; deleted a clause in the last sentence which read "whenever possible female employees shall also be persons honorably discharged from service during World War I, World War II, the Korean War, or the Vietnam Conflict."

71-2203. Acknowledgments—officers. (1) The board may provide for a seal. The members and employees of the board may take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the board or with the official duties of the members or employees of the board.

(2) The board shall select from its membership, a chairman, a vice-chairman, and a secretary.

History: En. Sec. 5, Ch. 111, L. 1945; Sec. 77-1005, R. C. M. 1947; amd. and redes. 71-1903 by Sec. 38, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "board" for "commission" throughout subsection (1); added subsection (2); and made minor changes in phraseology and style.

71-2204. Aid to be rendered by state, county and municipal officers. All state, county, and municipal officers shall render such aid to the board as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 6, Ch. 111, L. 1945; Sec. 77-1006, R. C. M. 1947; amd. and

redes. 71-1904 by Sec. 39, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "veterans

welfare commission"; and made minor changes in phraseology.

71-2205. Acceptance of money for service forbidden. A member or employee of the board may not accept, receive, or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law. A person who violates this section is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 111, L. 1945; Sec. 77-1007, R. O. M. 1947; amd. and redes. 71-1905 by Sec. 40, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "commission"; and made minor changes in phraseology.

71-2206. Board may accept federal funds. The board may accept from the federal government, or any agencies thereof, any funds made available to carry out purposes within the scope of the activities and commission purposes of the board and accept such funds as the board directs.

History: En. Sec. 1, Ch. 256, L. 1947; Sec. 77-1009, R. O. M. 1947; amd. and redes. 71-1906 by Sec. 41, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "veterans' welfare commission"; and made minor changes in phraseology.

71-2207. Contracts for reimbursing board authorized. The governor of this state and the chairman and secretary of the board may sign contracts with the federal government or any agency thereof for the reimbursement of the veterans' welfare commission for any work which the board may do for which any federal statute provides reimbursement to the states.

History: En. Sec. 2, Ch. 256, L. 1947; Sec. 77-1010, R. O. M. 1947; amd. and redes. 71-1907 by Sec. 42, Ch. 121, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "board" for "veterans' welfare commission"; and made minor changes in phraseology.

CHAPTER 23—PROBLEMS OF AGING

Section

- 71-2301. Functions of state department.
- 71-2302. Grants and gifts to state department—deposit and availability.
- 71-2303. Short title.
- 71-2304. Definitions.
- 71-2305. Purpose.
- 71-2306. Standards.
- 71-2307. Limitation on care offered.

71-2301. Functions of state department. The state department of social and rehabilitation services shall:

- (1) Consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging.

(2) Study and identify problems of aging.

(3) Review existing programs for the aging and make recommendations to the governor and the legislature for improvements in such programs.

(4) Encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons.

History: En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967; Sec. 82-3504, R. C. M. 1947; amd. and redes. 71-2001 by Sec. 43, Ch. 121, L. 1974.

Compiler's Notes

This section, formerly 82-3504, was renumbered by the Laws of 1974 as section 71-2001. Since the section number was already in use, the compiler renumbered the section to appear in chapter 23.

Amendments

The 1967 amendment substituted "commission" for "committee."

The 1974 amendment renumbered this section; substituted "state board of social and rehabilitation services" for "commission"; and made minor changes in phraseology, punctuation and style.

71-2302. Grants and gifts to state department—deposit and availability. The state department may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the grant or gift so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the state department.

History: En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967; Sec. 82-3505, R. C. M. 1947; amd. and redes. 71-2002 by Sec. 44, Ch. 121, L. 1974.

Compiler's Notes

This section, formerly 82-3505, was renumbered by the Laws of 1974 as section 71-2002. Since the section number was already

ready in use, the compiler renumbered the section to appear in chapter 23.

Amendments

The 1967 amendment substituted "commission" for "committee."

The 1974 amendment renumbered this section; substituted "state department" for "commission"; and made minor changes in phraseology.

71-2303. Short title. This act may be cited as the "Adult Foster Family Care Act."

History: En. 71-2303 by Sec. 1, Ch. 364, L. 1975.

Title of Act

An act to authorize the department of social and rehabilitation services to license and supervise adult foster family

care homes for three or fewer aged persons or disabled adults; amending section 11-2702.1, R. C. M. 1947, to add such homes to the definition of a community residential facility; and provide a delayed effective date.

71-2304. Definitions. As used in this act the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Adult foster family care homes" means private homes owned by one or more persons 18 years of age or older which offer light personal care or custodial care to aged persons or disabled adults who are not related to the owner by blood or marriage.

(3) "Aged person" means a person defined by the department as aged.

(4) "Disabled adult" means a person 18 years of age or older defined by the department as disabled.

(5) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration but not administration of prescriptive medications.

(6) "Custodial care" means providing a sheltered family-type setting for an aged person or disabled adult so as to provide for his basic needs of food and shelter and having a specific person available to help him meet his basic needs.

(7) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician.

History: En. 71-2304 by Sec. 2, Ch. 364, years of age or older" for "over the age of eighteen (18)" in subdivisions (2) and L. 1975; amd. Sec. 40, Ch. 37, L. 1977.

Amendments

The 1977 amendment substituted "18

of eighteen (18)" in subdivisions (2) and (4); and made minor changes in phraseology, punctuation and style.

71-2305. Purpose. In order to ensure the proper care of aged persons or disabled adults in foster family care homes and to implement provisions of federal law in Title XX, Social Service Amendments of 1974, the department may obtain, license, and supervise adult foster family care homes for three (3) or fewer aged persons or disabled adults in need of such care.

History: En. 71-2305 by Sec. 3, Ch. 364, L. 1975.

71-2306. Standards. The department may establish standards by which private residences may be licensed as adult foster family care homes. These standards shall provide for the safety and comfort of the residents, and shall be subject to the advice and recommendations of the department of health and environmental sciences, in relation to fire and safety requirements.

History: En. 71-2306 by Sec. 4, Ch. 364, L. 1975.

71-2307. Limitation on care offered. The type of care offered by adult foster family care homes for the purposes of this act is light personal care or custodial care and does not include skilled nursing care.

History: En. 71-2307 by Sec. 5, Ch. 364, L. 1975.

CHAPTER 24—COMMUNITY BASED SERVICES FOR DEVELOPMENTALLY DISABLED

Section

- 71-2401. Title.
- 71-2402. Definitions.
- 71-2403. Responsibilities of department.
- 71-2404. Rules.
- 71-2405. Community services.
- 71-2406. Planning and advisory council.

- 71-2407. Regional councils.
- 71-2408. Counties and municipalities permitted to contribute to system.
- 71-2409. Eligibility for services.
- 71-2410. Act applicable to reservation Indians.
- 71-2411. No effect on existing facilities.
- 71-2412. Discrimination forbidden.
- 71-2413. Severability.
- 71-2414. Departments to cooperate.

71-2401. Title. This act shall be known and may be cited as the "Montana Developmental Disabilities Services and Facilities Act of 1974."

History: En. 80-2611 by Sec. 1, Ch. 325, L. 1974; redes. 71-2401 by Sec. 10, Ch. 239, L. 1975.

Title of Act

An act authorizing services and facilities for the developmentally disabled within Montana; enabling counties to levy a tax for the authorizing services and facilities for the developmentally disabled; establishing a state council for developmental disabilities services and facilities; enabling counties to levy a tax for the support of services and facilities for the developmentally disabled, establishing de-

velopmental disability regions and regional councils; and creating the "Montana Developmental Disabilities Services and Facilities Act of 1974"; and providing an effective date.

Constitutionality

This act is constitutional within purview of 1972 Montana Constitution and supersedes such city ordinances that restrict use of residential areas to one-family dwellings only. State ex rel. Thelen v. City of Missoula, — M —, 543 P 2d 173.

71-2402. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely and constitutes a substantial handicap of the person.

(3) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(4) "Comprehensive developmental disability system" means a system of services including, but not limited to, the following basic services with the intention of providing alternatives to institutionalization:

- (a) evaluation services;
- (b) diagnostic services;
- (c) treatment services;
- (d) day care services;
- (e) training services;
- (f) education services;
- (g) employment services;
- (h) recreation services;
- (i) personal care services;
- (j) domiciliary care services;

- (k) special living arrangements services;
- (l) counseling services;
- (m) information and referral services;
- (n) follow-along services;
- (o) protective and other social and sociolegal services; and
- (p) transportation services.

(5) "Planning and advisory council" means the developmental disabilities planning and advisory council created in 71-2406.

History: En. 80-2612 by Sec. 2, Ch. 325, L. 1974; amd. and redes. 71-2402 by Sec. 1, Ch. 239, L. 1975; amd. Sec. 1, Ch. 559, L. 1977.

Amendments

The 1975 amendment renumbered this section; inserted subdivision (1); renumbered subsequent subdivisions accordingly; substituted "disability system" for "disability center" in subdivision (4); substituted "including, but not limited to, the following basic services" in subdivision (4) for "not necessarily encompassed

within one building offering any or all of the following sixteen (16) basic services"; and deleted the final sentence which read "Provision of service by a comprehensive center shall be authorized only when a generic service agency declines to provide such service."

The 1977 amendment substituted "if the disability originated before the person attained age 18" in subdivision (2) for "which condition"; added subdivision (5); and made minor changes in phraseology and punctuation.

71-2403. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive development disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community centered services. Every means shall be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 71-2405 and 71-2407 of this chapter.

(3) promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of developmental disabilities;

(4) collect and disseminate information relating to developmental disabilities;

(5) prepare, with the assistance of the planning and advisory council created under 71-2406, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services shall include but not be limited to community comprehensive developmental disabilities services as referred to in 71-2402.

(6) provide to the planning and advisory council a written quarterly report of planning, program, and fiscal activities of the department in regard to community-based services for the developmentally disabled;

(7) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(8) provide state personnel to assist regional councils provided for in 71-2407; and

(9) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations, grants of money, receipts from fees, gifts, supplies, materials,

and contributions to initiate and maintain developmental disabilities services within the state.

History: En. 80-2613 by Sec. 3, Ch. 325, L. 1974; amd. and redes. 71-2403 by Sec. 2, Ch. 239, L. 1975; amd. Sec. 2, Ch. 559, L. 1977.

Amendments

The 1975 amendment renumbered this section; substituted "department" for "state of Montana" at the beginning of the section; substituted "promote" for "make" at the beginning of subdivision (3); substituted "advisory council, created under section 71-2406" for "state council created in section 6[80-2616] herein" in subdivision (5); substituted "persons admitted into a program at a developmental disability facility" for "persons who shall

be admitted either as inpatients or outpatients into the Boulder river school and hospital, or other developmental disability clinic" in subdivision (6); inserted present subdivision (7); redesignated former subdivision (7) as (8); and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "assistance of the planning and advisory council" in subdivision (5) for "advice of the advisory council"; inserted subdivision (6); redesignated former subdivisions (6) through (8) as subdivisions (7) through (9); and made minor changes in phraseology, punctuation and style.

71-2404. Rules. (1) The department may adopt rules necessary for the proper administration of this chapter.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department shall contain specific conditions for performance by the contractor. It shall set minimum standards for programs and establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein requires facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) The department shall adopt rules in cooperation with the board of nursing under which a properly trained staff member of a facility providing services to developmentally disabled persons under this chapter may assist and supervise a client of the facility in taking medication if the medication is usually self-administered and if a physician has prescribed the assistance.

History: En. 80-2614 by Sec. 4, Ch. 325, L. 1974; amd. and redes. 71-2404 by Sec. 3, Ch. 239, L. 1975; amd. Sec. 41, Ch. 37, L. 1977; amd. Sec. 3, Ch. 559, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 559. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

Amendments

The 1975 amendment renumbered this section; substituted "department" for "state of Montana" at the beginning of the section; and substituted "by adopting rules"

for "by establishing and promulgating rules, regulations and standards" in the first sentence.

Chapter 37, Laws of 1977, substituted "requires" for "shall imply the necessity for" near the beginning of the fourth sentence; and made minor changes in phraseology and punctuation.

Chapter 559, Laws of 1977, inserted the subsection designations; substituted subsection (1) and the first two sentences of subsection (2) for the former first sentence which read "The department shall control developmental disabilities programs which receive any state assistance by adopting rules, for providing developmental disabilities facilities and services";

deleted "and compensation scales and personnel policies" after "qualifications" in the last sentence of subsection (2); added

subsection (4); and made minor changes in phraseology and punctuation.

71-2405. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies; indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, or private professional persons; or in accredited health or long-term care facilities.

(2) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this chapter shall conform as nearly as possible to the plans of the advisory council created under 71-2406 and the regional councils provided for in 71-2407.

History: En. 80-2615 by Sec. 5, Ch. 325, L. 1974; amd. redes. 71-2405 by Sec. 4, Ch. 239, L. 1975; amd. Sec. 42, Ch. 37, L. 1977.

Amendments

The 1975 amendment renumbered this section; substituted "department" for "state of Montana" at the beginning of subsection (1); inserted "programs" after "comprehensive services" in the first sentence and at the beginning of the second sentence in subsection (1); and substi-

tuted the subsection (2) for a former subsection (2) which read "State funds specifically appropriated for regional developmental disabilities service programs may not exceed fifty per cent (50%) of the total expenditures of the programs. Any fees collected under this act shall be deposited to the state's general fund in proportion to the state's contribution."

The 1977 amendment made minor changes in phraseology, punctuation and style.

71-2406. Planning and advisory council. (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of 22 members and consists of the following:

- (a) the directors of the departments of social and rehabilitation services, health and environmental sciences, and institutions or their designees;
- (b) the superintendent of public instruction or a designee;
- (c) one recognized private professional in each discipline of medicine, law, psychology, social work, and special education;
- (d) two members of the state senate;
- (e) two members of the state house of representatives;
- (f) four consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities; and
- (g) one member of each of the five regional councils provided for in 71-2407, who shall also be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) (a) Each member or his designee who serves on the council pursuant to subsection (2)(a) or (2)(b) of this section shall serve for a term concurrent with his respective term as a director or the superintendent of public instruction, as the case may be. Upon his removal from office, his or

his designee's term as a member of the council is automatically terminated and his successor in office or his successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsections (2)(d) or (2)(e) of this section shall be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsections (2)(c), (2)(f), or (2)(g) of this section shall be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining six members serving on the council shall be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(4) The council may elect from among its members the officers necessary for the proper management of the council.

(5) The council may adopt rules governing its own organization and procedures.

(6) A majority of the members of the council constitutes a quorum for the transaction of business.

(7) The council may employ and fix the compensation and duties of necessary staff.

(8) A council member, unless he is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed \$25 for each day in which he is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties, as provided for in 59-538, 59-539, and 59-801. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801.

(9) The council shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled;

(b) develop a plan for a statewide system of community based services for the developmentally disabled; and

(c) serve in any capacity required by federal law for the administration of federal programs for services to the developmentally disabled.

(10) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of this section, the provisions of 82A-108 apply.

History: En. 71-2406 by Sec. 5, Ch. 239, L. 1975; amd. Sec. 4, Ch. 559, L. 1977.

Title of Act

An act providing for community based services for the developmentally disabled;

amending and renumbering sections 80-2611 through 80-2615, 80-2621 through 80-2625, R. C. M. 1947; repealing sections 80-2605 through 80-2610, 80-2616 through 80-2618, and 80-2620, R. C. M. 1947; and providing for an effective date.

Amendments

The 1977 amendment inserted "planning and" before "advisory council" in subsection (1); substituted "the provisions of this section" in subsection (1) for "section 82A-110"; increased the council from 21 to 22 members in subsection (2); deleted "appointed or reappointed annually by the governor" after "members" in subsection (2); added "and special education" at the

end of subdivision (2)(c); inserted subsections (3) through (8); redesignated former subsections (3) and (4) as (9) and (10); deleted "advisory" before "council" near the beginning of subsections (9) and (10); added "for administrative purposes * * * apply" at the end of subsection (10); and made minor changes in phraseology, punctuation and style.

71-2407. Regional councils. (1) The department shall approve a citizens' organization as a regional council for each of the following five regions:

(a) Region one, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Treasure, Rosebud, Custer, Fallon, Powder River, and Carter Counties;

(b) Region two, consisting of Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, and Cascade Counties;

(c) Region three, consisting of Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Big Horn, and Carbon Counties;

(d) Region four, consisting of Powell, Lewis and Clark, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park Counties; and

(e) Region five, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli Counties.

(2) Under guidelines adopted by the department, a citizens' organization approved by the department shall be broadly representative of the region and at least one-third of its members shall be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) A citizens' organization shall be approved under procedures and rules adopted by the department.

(4) A regional council member who is not a full-time employee of the state or of a county is entitled to be reimbursed in an amount to be determined by the department, not to exceed \$25, for each day actually and necessarily engaged in the performance of board duties and for travel as provided in 59-801.

(5) A regional council shall:

(a) make an annual written review and evaluation of needs and services within the region and provide a copy of the review and evaluation to the planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled within the region; and

(c) develop a plan for a system of community based services for the developmentally disabled within the region and provide a copy of the plan to the planning and advisory council.

History: En. 71-2407 by Sec. 6, Ch. 239, L. 1975; amd. Sec. 5, Ch. 559, L. 1977.

Amendments

The 1977 amendment inserted "written" in subdivision (5)(a); added the require-

ment that a copy be provided the planning and advisory council in subdivisions (5)(a) and (5)(c); and made minor changes in phraseology, punctuation and style.

71-2408. Counties and municipalities permitted to contribute to system.

(1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state, may, in their discretion, contribute to any developmental disabilities facility approved by the department, without regard to whether they are within or outside of their respective jurisdictions. The boards of county commissioners of the counties may levy a tax up to, but not to exceed, one (1) mill on each dollar of taxable property within the county, which shall be in addition to all other county tax levies, all proceeds of the tax, if levied, shall be used for the sole purpose of support of developmental disabilities services.

(2) For the purpose of carrying out the provisions of this section, boards of county commissioners and governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities.

History: En. 80-2619 by Sec. 9, Ch. 325, L. 1974; amd. and redes. 71-2408 by Sec. 7, Ch. 239, L. 1975.

Amendments

The 1975 amendment renumbered this section; deleted "sums of money annually" after "contribute" in the first sentence in subsection (1); substituted "department" for "state of Montana" in the first sen-

tence in subsection (1); deleted "or to each of such facilities" before "without regard" in the first sentence in subsection (1); deleted "participating" before "counties" in the second sentence of subsection (1); substituted "disability services" for "disability facilities" at the end of subsection (1); and made minor changes in phraseology.

71-2409. Eligibility for services. Any person suspected of a developmental disability shall be eligible for initial intake and for diagnostic and counseling services through any comprehensive developmental disability center, without reference to any other eligibility criteria.

History: En. 80-2621 by Sec. 11, Ch. 325, L. 1974; redes. 71-2409 by Sec. 10, Ch. 239, L. 1975.

71-2410. Act applicable to reservation Indians. For purposes of this act, Indian people living within federal Indian reservations shall be entitled to all services provided for under this act.

History: En. 80-2622 by Sec. 12, Ch. 325, L. 1974; redes. 71-2410 by Sec. 10, Ch. 239, L. 1975.

71-2411. No effect on existing facilities. Nothing in this act shall be construed to prevent the continuation of existing developmental disabilities facilities or services in the state.

History: En. 80-2623 by Sec. 13, Ch. 325, L. 1974; redes. 71-2411 by Sec. 10, Ch. 239, L. 1975.

71-2412. Discrimination forbidden. The services provided under this act shall be made available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964.

History: En. 80-2624 by Sec. 14, Ch. 325, L. 1974; redes. 71-2412 by Sec. 10, Ch. 239, L. 1975; amd. Sec. 16, Ch. 38, L. 1977.

Amendments

The 1977 amendment inserted "religion" after "creed."

71-2413. Severability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If the part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 80-2625 by Sec. 15, Ch. 325, L. 1974; redes. 71-2413 by Sec. 10, Ch. 239, L. 1975.

Effective Date

Section 16 of Ch. 325, Laws 1974 read "This act shall be effective on January 1, 1975."

71-2414. Departments to cooperate. (1) The department of institutions, the department of social and rehabilitation services, the department of health and environmental sciences, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled.

(2) Funds appropriated to the department of institutions, Warm Springs state hospital, Galen state hospital, or Boulder River school and hospital may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of social and rehabilitation services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation.

History: En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch. 559, L. 1977.

Amendments

The 1977 amendment inserted "Warm Springs state hospital, Galen state hospital" near the beginning of subsection (2); deleted "for programs for the developmental disabled" before "may be transferred" in subsection (2); substituted "if residents of any of those institutions are transferred to a comprehensive developmental disability system" near the end of subsection (2) for "if there is a significant reduction in residents at the Boulder river school and hospital"; deleted former subsection (3) which provided for the transfer of funds appropriated to the department of social and rehabilitation services to the Boulder river school and hospital; and made minor changes in phraseology and punctuation.

Repealing Clauses

Section 9 of Ch. 239, Laws 1975 read "Section 71-2414 is repealed on June 30, 1977."

Section 11 of Ch. 239, Laws 1975 read "Sections 80-2605 through 80-2610, 80-2616 through 80-2618, and 80-2620, R. C. M. 1947, are repealed."

Section 7 of Ch. 559, Laws 1977 read "Section 9, Chapter 239, Laws of 1975, is repealed."

Effective Dates

Section 12 of Ch. 239, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 3, 1975.

Section 8 of Ch. 559, Laws 1977 read "Sections 1 through 6 of this act are effective on July 1, 1977. Section 7 of this act is effective on passage and approval of this act."

CHAPTER 25—TREATMENT OF CHRONIC RENAL DISEASE

Section

71-2501. Purpose.

71-2502. Establishment of program.

71-2501. Purpose. It is the intent of the legislature to ensure the establishment of a program for the care and treatment of persons suffering from chronic renal diseases, who require lifesaving care and treatment for such renal diseases, but who are unable to pay for the services on a continuing basis.

History: En. 71-2501 by Sec. 1, Ch. 453, L. 1975.

Title of Act

An act to establish a program providing lifesaving treatment for chronic renal disease, requiring standards for determining

eligibility to be established and appropriating two hundred thousand dollars (\$200,000) from the general fund for the biennium ending June 30, 1977, to the department of social and rehabilitation services for such purpose.

71-2502. Establishment of program. The department of social and rehabilitation services shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for such diseases, including the rental or purchase of home dialysis equipment and supplies. The department shall establish standards for determining eligibility for care and treatment under this program in order that treatment shall be provided to those who are financially unable to obtain such treatment without causing severe economic imbalance in the family economic unit. Such standards shall be established without reference to maximum or minimum income levels.

History: En. 71-2502 by Sec. 2, Ch. 453, L. 1975.

Appropriations

Section 3 of Ch. 453, Laws 1975 read "There is appropriated from the general fund of the state of Montana the sum of two hundred thousand dollars (\$200,000),

for the biennium ending June 30, 1977, to the department of social and rehabilitation services for the purposes of a program to provide financial assistance in obtaining medical, nursing, pharmaceutical, and technical services in the treatment of chronic renal diseases."

CHAPTER 26—CRIME VICTIMS COMPENSATION ACT

Section

71-2601. Short title.

71-2602. Legislative purpose and intent.

71-2603. Definitions.

71-2604. Award of compensation.

71-2605. Powers and duties of the division.

71-2606. Application for compensation—awards—limitations on awards.

71-2607. Hearings and informal disposition before the division.

71-2608. Evidence of condition.

71-2609. Enforcement of division's orders.

71-2610. Award and payment of compensation.

71-2611. Subrogation.

71-2612. Compensation benefits.

71-2613. Manner of payment—nonassignability and exemptions.

71-2614. Tentative awards.

- 71-2615. Reconsideration and review of division decisions.
- 71-2616. Rehabilitation.
- 71-2617. Appeal.
- 71-2618. Attorneys' fees.
- 71-2619. Public records—right to inspect.
- 71-2620. Limitation to benefit entitlements.
- 71-2621. Effect on probation and parole.
- 71-2622. Federal funding.
- 71-2623. Penalty.
- 71-2624. Crime victims compensation account established.
- 71-2625. Effective date.

71-2601. Short title. This act may be cited as "The Crime Victims Compensation Act of Montana".

History: En. 71-2601 by Sec. 1, Ch. 527, L. 1977.

Title of Act

An act to establish a state-financed program of compensation to persons who suf-

fer bodily injury and to dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or apprehend criminals; and to appropriate money therefor.

71-2602. Legislative purpose and intent. It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.

History: En. 71-2602 by Sec. 2, Ch. 527, L. 1977.

71-2603. Definitions. As used in this act, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this act:

- (a) a victim;
- (b) a dependent of a deceased victim; or
- (c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable under this act which the victim or claimant has received or which is readily available to him from:

- (a) the offender;
- (b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this act;
- (c) social security, medicare, medicaid, and welfare;
- (d) workers' compensation;
- (e) wage continuation programs of any employer;
- (f) proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct; or
- (g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this act shall be a substitute

for benefits under the contract or that the contract is a secondary source of benefits and benefits under this act are a primary source.

(3) "Criminally injurious conduct" means conduct that :

- (a) occurs or is attempted in this state;
- (b) results in bodily injury or death; and
- (c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle.

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of workers' compensation provided for in 82A-1004.

(6) "Victim" means a person who suffers bodily injury or death as a result of :

- (a) criminally injurious conduct;
- (b) his good faith effort to prevent criminally injurious conduct; or
- (c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

History: En. 71-2603 by Sec. 3, Ch. 527,
L. 1977.

71-2604. Award of compensation. The division shall award compensation benefits under this act if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

History: En. 71-2604 by Sec. 4, Ch. 527,
L. 1977.

71-2605. Powers and duties of the division. (1) The division shall :

- (a) adopt rules to implement this act;
 - (b) prescribe forms for applications for compensation; and
 - (c) determine all matter relating to claims for compensation.
- (2) The division may :
- (a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this act.

(b) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence; and

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge.

History: En. 71-2605 by Sec. 5, Ch. 527,
L. 1977.

71-2606. Application for compensation—awards—limitations on awards.

(1) An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the division.

(2) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(3) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. Unless the division determines that the interests of justice otherwise require in a particular case, compensation may not be awarded to the spouse of or a person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.

(4) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the division finds there was good cause for the failure to report within that time.

(5) In order to be entitled to benefits under this act, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(6) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(7) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such persons are not entitled to the benefits of this act.

History: En. 71-2606 by Sec. 6, Ch. 527,
L. 1977.

71-2607. Hearings and informal disposition before the division. The division may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the division may subpoena witnesses and documents as set forth in 82-4220. Hearings held under this subsection are not considered contested case hearings under the Montana Administrative Procedure Act. However, the division shall adopt rules regarding its informal hearing procedures.

History: En. 71-2607 by Sec. 7, Ch. 527,
L. 1977.

71-2608. Evidence of condition. (1) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant

or victim in a proceeding under this act in which that condition is an element.

(2) If the physical condition of a victim or claimant is material to a claim, the division may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The division shall pay for such examination or autopsy. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person to file with the division a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the division shall furnish him a copy of the report. If the victim is deceased, the division, on request, shall furnish the claimant a copy of the report.

(3) The division may require the claimant to supplement the application with any reasonably available medical reports relating to the injury for which compensation is claimed.

History: En. 71-2608 by Sec. 8, Ch. 527,
L. 1977.

71-2609. Enforcement of division's orders. If a person refuses to comply with an order of the division or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the division may make any just order, including denial of the claim.

History: En. 71-2609 by Sec. 9, Ch. 527,
L. 1977.

71-2610. Award and payment of compensation. (1) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing, an appeal of the conviction, or certiorari is pending or a rehearing or new trial has been ordered.

(2) The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under 71-2614.

History: En. 71-2610 by Sec. 10, Ch. 527,
L. 1977.

71-2611. Subrogation. (1) If a claimant seeks compensation under this act and compensation is awarded, the division is entitled to full subrogation against a judgment or recovery received by the claimant against the offender for all compensation paid under this act. The division's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender within 1 year from the date the criminally injurious conduct occurred, the division may

institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the division shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the division institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the division in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the division has paid compensation under this act and damages for which the division has not paid compensation, then the division's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender in such a way as to avoid and preclude the division from receiving its proper subrogation share as provided in this section. The division shall release its lien provided for in subsection (1) above upon receipt of its subrogation share.

History: En. 71-2611 by Sec. 11, Ch. 527,
L. 1977.

71-2612. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of \$125. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct

causing the death, subject to a maximum of \$125 per week. Weekly compensation payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents, unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding \$1,100, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim, and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act of criminally injurious conduct may not exceed \$25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed \$100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed \$100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed \$20,000, and the limitations of subsection (6) apply to compensation under this subsection (7).

History: En. 71-2612 by Sec. 12, Ch. 527,
L. 1977.

71-2613. Manner of payment—nonassignability and exemptions. (1) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(2) An award is not subject to execution, attachment, garnishment, or other process.

(3) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

History: En. 71-2613 by Sec. 13, Ch. 527,
L. 1977.

71-2614. Tentative awards. If the division determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

History: En. 71-2614 by Sec. 14, Ch. 527,
L. 1977.

71-2615. Reconsideration and review of division decisions. (1) The division on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(2) The right of reconsideration does not affect the finality of a division decision for the purpose of appeal.

History: En. 71-2615 by Sec. 15, Ch. 527,
L. 1977.

71-2616. Rehabilitation. The division shall refer to the department of social and rehabilitation services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this act and who, in the opinion of the division, may be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such programs.

History: En. 71-2616 by Sec. 16, Ch. 527,
L. 1977.

71-2617. Appeal. (1) After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the workers' compensation judge for review. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming or modifying the division's determination.

(2) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(3) Notwithstanding 82-4216, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court

of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 71-2617 by Sec. 17, Ch. 527,
L. 1977.

71-2618. Attorneys' fees. (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this act.

(2) The division may regulate the amount of the attorney's fee in any claim under this act when an attorney is representing a claimant.

(3) In cases under this act that go before the workers' compensation judge, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the judge.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant, or on his behalf, be paid directly or indirectly to a claimant's attorney.

History: En. 71-2618 by Sec. 18, Ch. 527,
L. 1977.

71-2619. Public records—right to inspect. The records the division maintains in its possession in the administration of this act are open to public inspection and disclosure in accordance with the provisions of 92-844 through 92-847.

History: En. 71-2619 by Sec. 19, Ch. 527,
L. 1977.

71-2620. Limitation to benefit entitlements. Claimants receiving benefits under this act are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the division determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

History: En. 71-2620 by Sec. 20, Ch. 527,
L. 1977.

71-2621. Effect on probation and parole. (1) The court when placing any convicted person on probation may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the division to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

History: En. 71-2621 by Sec. 21, Ch. 527,
L. 1977.

71-2622. Federal funding. The division may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts.

History: En. 71-2622 by Sec. 22, Ch. 527,
L. 1977.

71-2623. Penalty. Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in 94-6-302 and upon conviction shall, in addition to being punished as provided by that section, forfeit and repay any compensation paid under this act.

History: En. 71-2623 by Sec. 23, Ch. 527,
L. 1977.

Separability Clause

Section 24 of Ch. 527, Laws 1977 read
"If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

71-2624. Crime victims compensation account established. There is created a crime victims compensation account in the earmarked revenue fund. There shall be paid into this account 6% of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles.

History: En. 71-2624 by Sec. 25, Ch. 527,
L. 1977.

Appropriation

Section 26 of Ch. 527, Laws 1977 read
"There is appropriated to the department

of labor and industry, division of workers' compensation, from the crime victims compensation earmarked revenue account the sum of \$390,000 for the biennium ending June 30, 1979, for the purpose of administering this act."

71-2625. Effective date. (1) Sections 1 through 24 of this act are effective on January 1, 1978, and shall apply only to injuries resulting from criminally injurious conduct which occurred on or after January 1, 1978. However, the division may, after July 1, 1977, employ personnel and pay for expenses in order to establish the administration of the act, adopt rules of procedure, and initiate publicity regarding the benefits under the act.

(2) Section 26 of this act is effective July 1, 1977.

History: En. 71-2625 by Sec. 27, Ch. 527,
L. 1977.

TITLE 72—RAILROADS

Chapter

1. Railroads—regulation by public service commission, 72-101.1, 72-103, 72-107, 72-116, 72-118, 72-124, 72-126, 72-127, 72-136, 72-159, 72-169 to 72-171.
2. Railroad companies—general powers and duties, 72-231.
4. Liability of railroads for killing or injuring livestock, 72-406, 72-407, 72-409.
6. General regulation of business of railroads, 72-617, 72-618, 72-620, 72-622, 72-652.

CHAPTER 1—RAILROADS—REGULATION BY PUBLIC SERVICE COMMISSION

Section

- 72-101.1. Definitions and terms.
72-103. Meetings of commission—quorum—powers.
72-107. Expenses of commissioners and employees.
72-114. [Transferred.]
72-116. Power of board to fix rates, schedules, and classifications.
72-118. Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint.
72-124. Attorney general as attorney for commission.
72-126. Prohibition against rebates and discrimination.
72-127. Discrimination in rates and charges.
72-136. Acceptance of favors and gratuities from railroads prohibited.
72-159. Power of the commission as to sidetracks, stockyards and chutes.
72-169. Protection of employees affected by closure of station.
72-170. Notice to be served on consumer counsel.
72-171. Form of notice for public hearing.

72-101. (3779) Repealed.

Repeal

Section 72-101 (Sec. 1, Ch. 37, L. 1907; Sec. 9, Ch. 315, L. 1974), relating to cre-

ation of the railroad commission, was repealed by Sec. 3, Ch. 339, Laws of 1974.

72-101.1. Definitions and terms. (1) This act applies to the transportation of passengers and property between points in this state, and to the receiving, switching, delivering, storing, and handling of property, and to charges connected therewith, and applies to railroad companies, express companies, car companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property made from one point in this state to another point in this state, whether the transportation of it is wholly in this state, or partly in this state and partly in an adjoining state or states. (2) Unless the context requires otherwise, in Title 72: (a) "Transportation" includes instrumentalities of shipment or carriage. (b) "Railroad" means a corporation, company, or individual owning or operating a railroad, in whole or in part, in this state. The term also includes express companies and sleeping-car companies. (c) "Commission" or "board" means the public service commission, provided for in section 82A-1702. This act applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R. C. M. 1921; Sec. 72-114, R. C. M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "Unless the context requires otherwise, in Title 72" in subsection (2); substituted the first sentence of

subdivision (2) (c) for a sentence defining "board" as the "board of railroad commissioners"; and made minor changes in phraseology, punctuation and style.

DECISIONS UNDER FORMER LAW**Judicial Interference**

District court's writ of prohibition was vacated where it barred the board of railroad commissioners, *ex officio* the public service commission under former law,

from performing its duties concerning water company's application to increase rates and charges. *State ex rel. Board of Railroad Comrs. v. District Court*, 158 M 139, 488 P 2d 903.

72-102. (3780) Repealed.**Repeal**

Section 72-102 (Sec. 2, Ch. 37, L. 1907; Sec. 31, Ch. 177, L. 1965; Sec. 5, Ch. 7, L. 1973; Sec. 26, Ch. 100, L. 1973), relat-

ing to the oath of office for members of the railroad commission, was repealed by Sec. 24, Ch. 315, Laws 1974.

72-103. (3781) Meetings of commission—quorum—powers. The commission shall hold sessions at times and places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction of business. The members of the commission may administer oaths and affirmations. The commission may adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings concerning railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R. C. M. 1921; amd. Sec. 10, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted a first sentence establishing the railroad board's office in Helena and requiring that it be

open during business hours; substituted the present first sentence for a sentence requiring sessions at least once each month in Helena and at other places when expedient; substituted "commission" for "board of railroad commissioners" and "board" in three places; and made minor changes in phraseology.

72-104. (3782) Repealed.**Repeal**

Section 72-104 (Sec. 4, Ch. 37, L. 1907), relating to the seal of the board of rail-

road commissioners, was repealed by Sec. 24, Ch. 315, Laws of 1974.

72-107. (3785) Expenses of commissioners and employees. Commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to have their travel expenses reimbursed as provided for in sections 59-538, 59-539, and 59-801.

History: En. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R. C. M. 1921; amd. Sec. 11, Ch. 315, L. 1974; amd. Sec. 49, Ch. 439, L. 1975.

Amendments

The 1974 amendment deleted a final clause in the present sentence relating to expenses being passed upon and paid by the state board of examiners; deleted a

second sentence relating to the state furnishing offices and office supplies; and made minor changes in phraseology.

The 1975 amendment substituted "shall have a right to have their travel expenses reimbursed as provided for in sections 59-538, 59-539, and 59-801" for "shall have a right to free transportation, and to have their actual and necessary traveling expenses paid."

72-111. (3789) Repealed.**Repeal**

Section 72-111 (Sec. 8, Ch. 37, L. 1907), relating to allowances for postage, express-

age and other incidental expenses, was repealed by Sec. 24, Ch. 315, Laws of 1974.

72-114. [Transferred.]**Compiler's Notes**

Section 12, Ch. 315, Laws of 1974 re-numbered this section as sec. 72-101.1.

72-116. (3794) Power of board to fix rates, schedules, and classifications. (1) The board shall adopt all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and intimidation in the rates of freight and passenger tariffs on the different railroads in this state and to make the same effective by enforcing the penalties prescribed in this act. The board shall fairly and justly classify and subdivide all freight and merchandise of whatever character that may be transported over railroads of this state into such general and special classes or subdivisions as may be considered necessary or expedient. The board may fix different rates for different railroads and for different lines under the same management or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. The board shall also fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

(2) The rates, tolls, or charges on any property which shall for any reason remain unclassified by the board shall not in any event exceed the highest rates fixed for any classification by the board. The board may entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana or any point therein in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa. In proper cases, where it appears that the United States interstate commerce commission law has been violated, the board shall complain to the interstate commerce commission of the United States and aid such commission in any investigation it may make concerning violations of the United States law by furnishing evidence and in any other manner which may seem best suited to enforce both the United States and state law and to protect the interests of the people.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R. C. M. 1921; amd. Sec. 57, Ch. 359, L. 1977.

Amendments

The 1977 amendment deleted "as soon as

practicable after the organization of the board" after "adopt" near the beginning of subsection (1); substituted "intimidation" in the first sentence of subsection (1) for "extortion"; and made minor changes in phraseology, punctuation and style.

72-117. (3795) Making schedules effective.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this sec-

tion for "commissioners," "railroad commissioners," and "board."

72-118. Power to alter classification or rate—approval of changes or revisions by the board—hearing complaint. The said board shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided. The said board shall make and establish reasonable rates for the transportation of freight within the state of Montana, and shall prescribe rates, tolls and charges for all other service performed by any railroad subject hereto. No change or revision of any rate, charge, classification or rule of service contained in any tariff, classification or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the board. Such changes or revisions shall be made by either of the methods hereinafter set forth:

(1). * * * [Same as parent volume.]

(2) by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided, however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof. Upon filing such changes or revisions, all tariff sheet or sheets, when suspended by the board, must be supported by such prepared testimony and exhibits from the railroad as will support such changes or revisions. The prepared testimony and exhibits must be filed with the commission thirty (30) days after the effective date of such suspension. Such testimony and exhibits may be supplemented prior to, or at the time of hearing, and supplemental exhibits may be filed after the close of the hearing at the direction or with permission of the commission.

Upon its own initiative, or upon the complaint of any interested party filed with the board within twenty (20) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred eighty (180) days, provided, however, that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the rail carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a rail carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given

for such hearing to all known interests or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided, however, that unless such hearing is held and such order is issued within one hundred eighty (180) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

The board may, on its own motion or on the complaint by a shipper or other person interested investigate any rate, classification or rule approved and in effect for transportation of freight by any railroad within the state of Montana. The said board must, within sixty (60) days after the commencement of an investigation on the board's initiative, or after the filing with such board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said board.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R. C. M. 1921; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973.

Amendments

The 1973 amendment inserted the third, fourth and fifth sentences in subdivision (2); increased the time for filing a complaint under the second paragraph of subdivision (2) from fifteen to twenty days; extended the maximum period for suspension of a rate under the first sentence of the second paragraph of subdivision (2) from 120 to 180 days; substituted "by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or

publishing agent" for "by the board of any complaint filed by any interested party to any proposed tariff change or revision" in the proviso to the first sentence of the second paragraph in subdivision (2); extended the period during which a hearing may be held as set forth near the end of the second paragraph of subdivision (2) from 120 to 180 days; and extended the time for determination of the justness of a rate as set forth in the second sentence of the third paragraph of subdivision (2) from forty to sixty days.

Effective Date

Section 2 of Ch. 429, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 22, 1973.

72-121. (3799) Duty of railroad company to report accidents.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in this section for "board of railroad commissioners."

72-124. (3802) Attorney general as attorney for commission. The attorney general is the attorney of the commission, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this law, in his own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this law. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute, and appear and defend, any action or proceeding arising under this law. All suits and proceedings filed in any court of this state, under this law, shall have precedence over all other business in the court, except criminal business and original proceedings in the supreme court.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R. C. M. 1921; amd. Sec. 13, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "com-

mission" for "board" throughout the section; deleted a final sentence relating to the payment of fees and expenses of additional counsel; and made minor changes in phraseology and punctuation.

72-126. (3804) Prohibition against rebates and discrimination. If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, charges, demands, or receives from any person, firm, or corporation, a greater or less compensation for any service rendered or to be rendered in the transportation of property subject to the provisions of this act than that fixed by the commission for such service, such railroad is guilty of intimidation, and shall forfeit and pay to the state of Montana not less than \$500 or more than \$2,000 for each offense. Nothing in this section prevents any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

History: En. Sec. 22, Ch. 37, L. 1907; Sec. 4385, Rev. C. 1907; re-en. Sec. 3804, R. C. M. 1921; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 58, Ch. 359, L. 1977.

Amendments

The 1974 amendment substituted "com-

mission" in the first sentence for "board of railroad commissioners."

The 1977 amendment substituted "intimidation" near the end of the first sentence for "extortion"; and made minor changes in phraseology, punctuation and style.

72-127. (3805) Discrimination in rates and charges. If any railroad subject to this act or its agents or officers hereafter collects, charges, demands, or receives from any person, company, firm or corporation a greater rate, charge, or compensation than that fixed and established by the commission for the transportation of freight, passengers, or cars or for the use of any car on the line of its railroad or any line operated by it or for receiving, forwarding, handling, or storing any such freight car or for any other service performed or to be performed by it, such railroad and its agents and officers are guilty of intimidation and shall forfeit and pay to the state of Montana a sum not less than \$500 or more than \$2,000.

History: En. Sec. 23, Ch. 37, L. 1907; Sec. 4386, Rev. C. 1907; re-en. Sec. 3805, R. C. M. 1921; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 59, Ch. 359, L. 1977.

Amendments

The 1974 amendment substituted "com-

mission" for "board of railroad commissioners."

The 1977 amendment substituted "intimidation" near the end of the section for "extortion"; and made minor changes in phraseology, punctuation and style.

72-133 to 72-135.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners," "board," "railroad commissioners," and "railroad commission."

72-136. (3813) Acceptance of favors and gratuities from railroads prohibited. A public service commissioner or the secretary may not, directly or indirectly, solicit or request from or recommend to any railroad corporation, or any officer, attorney, or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney,

or agent, offer any place, appointment, or position or other consideration to such commissioners, or either of them, nor to any clerks or employees of the commission; neither shall the commissioners, or either of them, nor their secretary, clerks, agents, employees, or experts, accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation; and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts, or other gratuity, shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employee or employees, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R. C. M. 1921; amd. Sec. 14, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "public service commissioner" for "railroad

commissioner" in the first sentence; deleted "or of the board" after "employees of the commission" in the first clause of the second sentence; deleted a second clause from the final sentence relating to fine and imprisonment; and made minor changes in phraseology.

72-141. (3818) Repealed.

Repeal

Section 72-141 (New section recommended by code commissioner, 1921), relating

to jurisdiction of the railroad commission over docks and wharves, was repealed by Sec. 24, Ch. 315, Laws of 1974.

72-142. (3819) Commission to inquire into observance of laws, etc.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in this section for "board of railroad commissioners."

72-145 to 72-147.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in these sections for "board of railroad commissioners."

72-150 to 72-152.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" in these sections for

"railroad commission of the state of Montana."

72-156. (3834) Powers of commission as to stations and crossings.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this sec-

tion for "board of railroad commissioners of the state of Montana" and "board of railroad commissioners."

72-158. (3836) Joint rates—division among carriers.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" in this section for

"board," "board of railroad commissioners of the state of Montana," and "board of railroad commissioners."

72-159. (3837) Power of the commission as to sidetracks, stockyards and chutes. The commission shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers

operating within the state of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stockyards, stockchutes, or stockpens, whenever the necessity therefor has been established to the satisfaction of the commission; provided, however, where a sidetrack, spur track or loading and unloading facility has been constructed for and used exclusively by a single shipper or industry and is not used by the public and the individual shipper or industry requests that such track or facility be removed from its property then such removal may be made by giving notice of such request for removal to the commission and without necessity for approval of such removal; and, provided further, that in the event such sidetrack, spur track or stock facility formerly used by the public, has not been used by the public for loading or unloading rail shipments for a period of five (5) years, and proof thereof is established by affidavit of a railroad officer having knowledge thereof, then such installation or facility may be removed after the railroad involved has given ninety (90) days' notice to the Montana public service commission, and to the Montana consumer counsel, unless the commission, within the ninety (90) day period notifies the railroad that such removal may not be made until approval by the commission, in which case the commission shall set a public hearing within ninety (90) days of such notice to the railroad, to determine whether public convenience and necessity requires the continued maintenance of such installation or facility.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R. C. M. 1921; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975.

Amendments

The 1974 amendment substituted "com-

mission" for references to the board of railroad commissioners of the state of Montana.

The 1975 amendment added the two provisos at the end of the section, following "satisfaction of the commission."

72-160. (3838) Enforcement of regulation in district court.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" in this section for

"board," "board of railroad commissioners of the state of Montana," and "board of railroad commissioners."

72-162 to 72-168.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners," "board," and "board of railroad commissioners of the state of Montana."

72-169. Protection of employees affected by closure of station. Whenever any railroad, as defined in section 72-115 is granted the authority to close a railroad station or facility by order of the public service commission, it shall be incumbent on the commission to require employee protection. Before the commission may approve closure of a station or facility, it shall require from the railroad an agreement to protect employees affected by the closure by providing jobs equal in nature and pay to the job held by the employee for the six (6) months prior to such closure. The equal job and pay agreement must be in effect for a period of four (4) years or, in the alternative, the number of years the employee has been employed prior

to closure, whichever is shorter. Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

History: En. Sec. 1, Ch. 377, L. 1973.

railroad employees affected by closure of railroad stations and facilities.

Title of Act

An act to provide for job protection for

72-170. Notice to be served on consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the Montana consumer counsel.

History: En. 72-170 by Sec. 1, Ch. 185, L. 1974.

regulation of the business of railroads to the Montana consumer counsel; and to make reference to the availability of the Montana consumer counsel in notices of hearings by adding the following sections to Title 72, R. C. M. 1947.

Title of Act

An act to provide for the giving of notice of public hearings regarding the

72-171. Form of notice for public hearing. All forms of notice of public hearings conducted by the public service commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the Montana consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 72-171 by Sec. 2, Ch. 185, L. 1974.

CHAPTER 2—RAILROAD COMPANIES—GENERAL POWERS AND DUTIES

Section

72-231. Rail rate discrimination—penalty.

72-231. Rail rate discrimination—penalty. (1) It is unlawful for any railroad subject to this title to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter distance than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as through rate than the aggregate of the intermediate rates; provided that upon application to the public service commission and after investigation, such carrier, in special cases, may be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed.

(2) Violations of this section shall be punished in accordance with 72-149.

History: En. 72-231 by Sec. 1, Ch. 473,
L. 1977.

Title of Act

An act to revive the prohibition against discriminatory charges for transportation along portions of railroad routes.

**CHAPTER 4—LIABILITY OF RAILROADS FOR KILLING OR
INJURING LIVESTOCK**

Section

72-406. Company may deposit value of animal.

72-407. Payment of claim for damages to department of livestock.

72-409. Carcass and hide of animal.

72-406. (6545) Company may deposit value of animal. If a corporation, association, company, or person so owning, controlling, or operating a railroad or branch thereof, kills or injures an animal as aforesaid, and tenders to the owner or owners thereof, or to his or their agent in that behalf, the amount which they consider to be the value thereof, or the damage thereto, as the case may be; or if the railroad, corporation, association, company, or person, deposits with the department of livestock such amount for the owner or owners thereof; and the owner or owners, or his or their agent, refuses to accept the amount in settlement thereof, then the owner or owners shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage, unless he or they recover in the action more than the amount so tendered.

History: En. Sec. 723, 5th Div. Comp. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. 6545, R. C. M. 1921; amd. Sec. 15, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "board of stock commissioners"; and made minor changes in phraseology.

72-407. (6546) Payment of claim for damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of section 72-401 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within six (6) months from the date the animal or animals are killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department of livestock shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department of livestock.

(2) The money recovered shall be paid to the department of livestock, and shall be held by the department of livestock for a period of two (2) years after the date of its receipt. If the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed, within the two (2) years, the money shall be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves his claim within the two (2) years, the department of

livestock may pay the claimant the amount of money to which he is entitled for the animal or animals killed by the railroad or railroad company, the damages for which have been collected by the department of livestock.

(3) In actions prosecuted for the recovery of the value of livestock killed under this act, the prevailing or successful party shall recover all costs. If the owner of an animal or animals killed has not presented his claim against the railroad or railroad company which caused it to be killed, a settlement made by the department of livestock constitutes a bar against an action by the owner of the animal or animals.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R. C. M. 1921; amd. Sec. 16, Ch. 315, L. 1974.

partment of livestock" for "secretary of the state livestock commission" and "livestock commission" throughout the section; and made minor changes in phraseology and punctuation.

Amendments

The 1974 amendment substituted "de-

72-409. (6548) Carcass and hide of animal. In all cases where a corporation, association, company, or person kills, or injures an animal to such extent that it is necessary to kill the animal, as provided in this chapter, they shall skin the animal, and preserve the whole hide, or so much thereof as can be preserved, including the head and ears, and are entitled to the carcass and hide thereof, unless the owner or owners thereof claim the animal, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But, in case such corporation, association, company, or person, so entitled thereto, takes the carcass and hide, they shall skin the animal as herein provided, and shall deposit the hide thereof at the station designated on their line, such station to be designated by the department of livestock, during the space of sixty (60) days, for the inspection of persons claiming to be interested therein, and if no person claims the animal, then before the corporation, association, company, or person disposes of the hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect the hide for marks and brands, and receive from the stock inspector his authority, in writing, to dispose of the hide. The stock inspector shall notify all owners of the stock, if known or ascertainable from the inspection, of the death of the animal, and if the owner is unknown, the stock inspector shall notify the department of livestock of the death of the animal. The corporation, association, company, or person may dispose of the whole animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state, if the owner or owners do not claim the animal. Upon receiving the animal, the licensed rendering plant or licensed renderer shall skin the animal, and shall preserve the hide, or so much thereof as can be preserved, including the hide of head and ears, and the hide shall be stored separate and apart from hides received from other sources. Within five (5) days after receipt of the hide, the licensed rendering plant or licensed renderer shall notify the department of livestock of possession of the hide. The department of livestock shall make an inspection thereof within ten (10) days after being so notified, and shall immediately notify the owner thereof, if ownership be ascertainable, of the death of the animal. If no person claims the hide of the animal within thirty (30) days after notice

given to the department of livestock by the licensed renderer or licensed rendering plant, the department of livestock shall give written authorization to the licensed rendering plant or licensed renderer to dispose of the hide. Before making disposition thereof under the written authorization, the licensed rendering plant or licensed renderer shall obtain the consent of the corporation, association, company, or person from which the animal was received.

History: En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1949; amd. Sec. 17, Ch. 315, L. 1974.

Amendments

The 1974 amendment substituted "department of livestock" for "secretary of the state livestock commission" in the

second and third sentences; substituted "department of livestock" for "state livestock inspector" in the sixth, seventh and eighth sentences; deleted a former eighth sentence reading "If the owner is unknown, the stock inspector shall notify the secretary of the livestock commission of the death of such animal"; and made minor changes in phraseology and punctuation.

CHAPTER 5—REGULATIONS CONCERNING RIGHT OF WAY FENCES AND CATTLE GUARDS

72-507. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-35-174. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title.

Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as section 94-35-174.

CHAPTER 6—GENERAL REGULATION OF BUSINESS OF RAILROADS

Section

- 72-617. Persons to whom free transportation may be issued.
- 72-618. Additional free transportation authorized.
- 72-620. Persons or property may be transported free or at reduced rates in certain cases.
- 72-622. Size and equipment of caboose—failures.
- 72-652. Headlights and speedometers for locomotives.

72-617. (6573) Persons to whom free transportation may be issued.

The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following, to wit: (a) The officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers; (b) to the families of the persons included in subdivision "a" hereof; (c) the general officers of any such common carriers; (d) employees of sleeping car and express car companies, and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys and newsgirls on trains, baggage agents; (e) persons injured in wrecks, and physicians and nurses attending such persons; (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation; (g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations; (h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including

those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes; (j) superannuated and pensioned employees, and members of their families and surviving spouse of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (l) policemen and firefighters of any city, wearing the insignia of their office within the limits of such city; (m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations and Young Women's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; (n) indigent, destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents, employees in such transportation; (o) school children to and from public or parochial schools; (p) the railroad commission of Montana; (q) the state fire marshal; (r) the state scale expert, and their necessary employees, while traveling on official duty.

The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city, where a condition of a franchise grant requires the furnishing of transportation to policemen, firefighters, and officers while in the performance of official duties. All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that this act shall not be construed to modify or repeal the provisions of section 72-618.

History: En. Sec. 2, Ch. 136, L. 1911; re-en. Sec. 6573, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1929; amd. Sec. 1, Ch. 78, L. 1933; amd. Sec. 35, Ch. 535, L. 1975.

girls" after "newsboys" in item (d); substituted "surviving spouse" for "widows" in item (j); and inserted "and Young Women's Christian Associations" in item (m).

Amendments

The 1975 amendment inserted "and news-

72-618. (6573.1) Additional free transportation authorized. That common carriers of passengers in this state authorized by section 72-617, to issue free transportation to certain classes of persons may also issue free transportation to their furloughed employees and members of their families, to persons who have become disabled or infirm in the service of a common carrier, to members of families of persons who have become disabled or infirm in the service of any such common carrier, to families of persons killed, and surviving spouses who have not remarried and minor children during minority, of persons who died while in the service of any such common carrier, to witnesses attending any legal investigation in which such carrier is interested, for the remains of persons who died while in the employment of a common carrier, and to ex-employees traveling for the purpose of entering the service of any such common carrier; provided that the provisions hereof shall not be construed to prohibit or make unlawful the interchange of passes for the persons to whom free transportation may be furnished under this section.

History: En. Sec. 1, Ch. 9, L. 1929; amd. Sec. 36, Ch. 535, L. 1975.

viving spouses who have not remarried" for "widows during widowhood" near the middle of the section.

Amendments

The 1975 amendment substituted "sur-

72-620. (6575) Persons or property may be transported free or at reduced rates in certain cases. No provisions of the laws of this state shall prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state, from carrying, storing, or handling property free, or at reduced rates, for the United States, state, or municipal governments, or for charitable institutions, or property which is being transported to or from fairs and expositions for exhibit thereat, or cars used by the government of the United States or state of Montana for the transportation of fish, for carrying free or at reduced rates agents and employees employed in such transportation, and nothing therein contained shall prevent such person, association, company, or corporation from issuing free transportation, or selling tickets at reduced rates, to the following classes of persons:

- (1) Employees of the issuing road, and the members of their families.
- (2) Officers and employees of other railroads, and the members of their families upon the exchange of passes or tickets.
- (3) Doctors, nurses, and helpers being carried to wrecks.
- (4) Soldiers or sailors going to or coming from institutions for their keeping.

(5) Ministers of religion and persons engaged in charitable or religious work, and destitute or homeless persons being transported by charitable societies, or at public expense.

(6) Executive, judicial, or legislative officers of this state including the members of the faculty of the different educational institutions of the state. When free transportation, or a ticket at a reduced rate, is issued to any such officer, or any president or member of the faculty of any educational institution, it shall only be issued upon the application of the secretary of state, and the transportation, or ticket, shall be delivered to the secretary of state for delivery to the person or persons applying therefor, and the secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. The state officer and the president and faculty of the state educational institutions when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

History: En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R. C. M. 1921; amd. Sec. 18, Ch. 315, L. 1974.

Amendments

The 1974 amendment deleted "state game warden and his deputies," "mem-

bers of the state board of horticulture," "officers, trustees, or employees of the state fair," and "officers and inspectors of the livestock and sheep commission boards" from among the officers named in subdivision (6); and made minor changes in phraseology, punctuation and style.

72-622. (6577) Size and equipment of caboose—failures. (1) Caboose shall be at least 24 feet in length, exclusive of platforms, and shall be provided with a door in each end and with cupolas, or bay windows, plat-

forms, guard rails, grabirons, and steps for the safety of persons in alighting or getting on cabooses. Cabooses shall be of metal frame construction and be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall have at least two (2) four-wheel trucks with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of $2\frac{1}{2}$ inches and a minimum capacity of 18,000 foot pounds, and shall comply with Association of American Railroad Standard N-901 or its equivalent.

(b) Electric lighting of at least 40 foot candles shall be provided for direct illumination of the caboose desk, reading areas and lavatory facilities.

(c) A spotlight shall be provided on the rear of the caboose with sufficient candle power to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker, or markers, shall be either reflectorized or capable of illumination when required.

(e) Only glass of the safety glass type shall be used in partitions, doors, windows or wind deflectors.

(f) All seats and seat backs shall conform to the safety standards designed by the U.S. department of transportation in its "Federal Motor Vehicle Safety Standards", Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs shall be rounded to prevent injury to employees.

(2) Where a failure occurs in required equipment or standards of maintenance after a caboose has commenced to move in service, the failure shall be reported in accordance with subsection (3) of this section. The railroad operating that caboose is not in violation of this act if the failure of equipment or standards of maintenance is corrected at the first point maintenance supplies are available, or in the case of repairs, the first point materials and repair facilities are available and repairs can reasonably be made. If, in any particular case, temporary exemption from any requirements of this act is considered necessary by a carrier concerned, the public service commission may consider the application of that carrier for temporary exemption and may grant an exemption when the application is accompanied by a full statement of the conditions existing and the reason for the exemption. Any exemption so granted will be limited to the particular case, and will be limited to a stated period of time.

(3) A register for the reporting of failures of the required equipment or standards of maintenance shall be maintained on all cabooses, and provisions for maintaining a record of reported failures for not less than the previous 80-day period shall be established.

(4) The provisions of this act apply to all cabooses, except those used exclusively in yard service.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6557, R. C. M. 1921; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977.

Amendments

The 1975 amendment deleted an introductory clause prohibiting the use of substandard cabooses; inserted the subsection (1) designation; deleted the requirement of suitable water closets; inserted "or bay windows" after "cupolas" in subsection (1); deleted requirements for cabooses to be equipped with at least two four-wheel trucks; added the requirements for metal frame construction and noise insulation; added subdivisions (1)(a) to (1)(d); added subsections (2), (3), and (4); and made minor changes in style and phraseology. For prior version, see parent volume.

The 1977 amendment inserted subdivision (1)(e); designated the former second sentence of subdivision (1)(b) as subdivision (1)(d); redesignated former subdivisions (1)(e) and (1)(d) as subdivisions (1)(e) and (1)(f); and made minor changes in style.

Effective Dates

Section 2 of Ch. 92, Laws 1975, provided that compliance with the 1975 amendment "shall be completed within five (5) years of its passage and approval." Approved March 19, 1975.

Section 2 of Ch. 33, Laws 1977 read "Compliance with this act shall be completed within 3 years of its passage and approval."

72-627. (6582) Duty to furnish shipping facilities.

Compiler's Notes

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in this

section for "board of railroad commissioners."

72-631 to 72-634. (6586 to 6589) Repealed.

Repeal

Sections 72-631 to 72-634 (Secs. 1 to 4, Ch. 87, L. 1905; Sec. 1, Ch. 250, L. 1921), relating to the establishment of passenger

rates at three cents per mile and providing for penalty for violations, were repealed by Sec. 24, Ch. 315, Laws of 1974.

72-652. (6609) Headlights and speedometers for locomotives. (1) A person, corporation, or company operating a railroad or railway in this state must equip all locomotive engines used in the transportation of trains over the railroad or railway with:

(a) electric headlights of at least 1,500 candle power, measured without the aid of a reflector; and

(b) a speedometer that is maintained in good working order at all times and that is located in the lead or controlling unit.

(2) A locomotive used exclusively in yard service is not required to be equipped with a speedometer.

(3) If the speedometer fails en route it will be deemed as being in good working order until it reaches the next terminal where it will be exchanged with an engine with a working speedometer if one is available.

History: En. Sec. 1, Ch. 18, L. 1909; re-en. Sec. 6609, R. C. M. 1921; amd. Sec. 1, Ch. 181, L. 1977.

Amendments

The 1977 amendment deleted a provision requiring compliance with the section within a year after its passage; deleted

provisions permitting the use of non-electric headlights of at least 1,500 candle power and exempting switching engines from the headlight requirement; added subdivision (1)(b) and subsections (2) and (3); and made minor changes in phraseology. For prior version, see parent volume.

72-662. (6619) Duty of commission to enforce law.

Compiler's Notes

Section 20, Ch. 315, Laws 1974, substituted "commission" in this section for

"railroad commission of the state of Montana."

72-664 (6621) Hearing of complaint by commission.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout this sec-

tion for "board of railroad commissioners" and "board."

72-671, 72-672. [Transferred from Title 94.]**Compiler's Notes**

These sections were originally numbered 94-35-109 and 94-35-203. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not re-

printed here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
72-671	94-35-109
72-672	94-35-203

CHAPTER 7—RAILROAD CROSSINGS—REGULATION

72-703. (6627) Order of county commissioners, etc.**Compiler's Notes**

Section 21, Ch. 315, Laws 1974, substituted "public service commission" in this

section for "board of railroad commissioners of the state of Montana."

72-704 to 72-709.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substituted "commission" throughout these sec-

tions for "board of railroad commissioners."

72-711. (6635) Penalty for failure to comply with order for construction.**Compiler's Notes**

Section 20, Ch. 315, Laws 1974, substi-

tuted "commission" in this section for "board of railroad commissioners."

TITLE 73—RECORDING TRANSFERS

Chapter

1. Recording transfers—release of oil, gas and mineral leases, 73-115.
2. Effect of recording or failure to record conveyance of real property, 73-213.

CHAPTER 1—RECORDING TRANSFERS—RELEASE OF OIL, GAS AND MINERAL LEASES

Section

73-115. Action to compel release.

73-115. (6903) Action to compel release. (1) If the lessee or assignee thereof neglects or refuses to execute a release as provided by this act, the owner of the leased premises may sue in any court of competent jurisdiction to obtain the release, and in such action he also may recover from the lessee, his successor, or assigns the sum of \$100 as damages, all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and any additional damages that the evidence in the case warrants. Writs of attachment may issue as in other cases. If in the action the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the lessee or assignee of the lease. Issues in regard to attorney's fees shall be determined in the same manner as other issues in such actions.

(2) When, by its terms, an oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years have elapsed since the expiration, the owner of the leased premises, in addition to all other remedies, may serve a written notice on the lessee or on the assignee thereof, which notice shall state:

- (a) the names of the lessor, lessee, and assignee thereof if assigned;
- (b) the date of the lease and the date of the expiration thereof;
- (c) the description of the lands leased;
- (d) the place, book, and page where the lease is recorded; and
- (e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease shall be terminated and of no effect and shall cease to be a lien upon the lands described therein, unless the lessee or the assignee thereof, within 60 days from the date of service of the notice, files, in the county clerk's office in the county where the lease or abstract of such lease is recorded, an affidavit stating that the lease is in effect and delivers a copy thereof to the owner of the leased lands.

(3) If the lessee or the assignee thereof resides in the county where the lease or abstract of the lease is recorded, the notice shall be personally served on that person. If the lessee or the assignee thereof does not reside in that county but his address appears on the records in that county clerk's office or is otherwise known, the notice shall be mailed by certified mail to that person at that address, and in addition thereto the notice shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the lands are situated. If the address of

the lessee or assignee is unknown, the notice shall be published in the manner provided above. The date of service of the notice, if served personally, the date of mailing, if served by mail, and the first date of publication of the notice, if published, must be at least 60 days before the date of termination referred to in the notice.

(4) Upon the expiration of the time mentioned in the notice, if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit of service of the notice in the county clerk's office of the county in which the lands are located, and the affidavit shall be kept as a permanent file in his office, and this proof of notice when so filed is prima facie evidence of the sufficiency of the notice, and from the filing thereof the lease is terminated and the lands released from the lien thereof.

History: En. Sec. 2, Ch. 22, L. 1917; re-en. Sec. 6903, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1929; amd. Sec. 1, Ch. 146, L. 1947; amd. Sec. 6, Ch. 218, L. 1971; amd. Sec. 36, Ch. 39, L. 1977.

Amendments

The 1977 amendment substituted "certified mail" in subsection (3) for "registered mail"; and made numerous minor changes in phraseology, punctuation and style. For prior version, see parent volume.

CHAPTER 2—EFFECT OF RECORDING OR FAILURE TO RECORD CONVEYANCE OF REAL PROPERTY

Section

73-213. Validation of conveyances recorded after defective execution—1973 act.

73-202. (6935) Conveyances to be recorded, or are void, etc.

Fraudulent Conveyances

In determining the date of transfer of an alleged fraudulent conveyance under the Federal Bankruptcy Act, the date of transfer of an assignment of a note and mortgage was the date of recordation and not the date upon which the transfer was

effective between the parties since it is not until recordation that subsequent transferees or purchasers could not acquire an interest superior to that of the original transferee. *Raucci v. Davis*, 161 M 270, 505 P 2d 887.

73-213. Validation of conveyances recorded after defective execution—1973 act. Any instrument affecting real property, provided no action is now pending to set such instrument aside which was, previous to January 1, 1973, copied into the proper book kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission or informality in the execution of the instrument or in the certificate of acknowledgment thereof, or the absence of any such certificate; and all such instruments heretofore acknowledged by the vice-president and assistant secretary of any corporation, or by either of them, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation, and recorded, shall be valid and shall have the same force and effect as though acknowledged by the president or secretary; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 147, L. 1973.

Title of Act

An act validating certain instruments affecting real property and which were erroneously executed or acknowledged prior

to January 1, 1973; imparting notice by recording thereof; and providing that duly certified copies thereof may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

TITLE 74—SALES AND EXCHANGE

Chapter

6. Retail installment sales, 74-602, 74-604 to 74-606, 74-608, 74-610, 74-611.
7. Auctions and auctioneers, 74-701 to 74-716.

CHAPTER 2—STATUTES OF FRAUDS

74-203. (7593) Contract for sale of real property.

Memorandum

Prospective buyer was entitled to return of earnest money where realtor was unable to produce any written documentation of his alleged agency to sell realty. *Pack River Co. v. Young*, — M —, 511 P 2d 12.

Option Agreement

Evidence of payment of money pursuant

to the purchase of real estate for the purpose of persuading seller to hold the deal open for a certain period of time, and the subsequent actions of the seller in holding the property off the market, were sufficient to establish a valid option agreement, as well as to show that the agreement had been fully performed. *Lynch v. Shields*, — M —, 529 P 2d 348.

CHAPTER 6—RETAIL INSTALLMENT SALES

Section

- 74-602. Definitions.
74-604. Denial, suspension, or revocation of licenses.
74-605. Investigations and complaints.
74-606. Powers of department.
74-608. Finance charge limitation.
74-610. Refinancing retail installment contract.
74-611. Penalties.

74-602. Definitions. (1) Unless the context requires otherwise, in this act:

(a) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal, but not including money or things in action. The term includes goods which, at the time of the sale or subsequently, are to be so affixed to realty as to become a part thereof whether or not severable from it.

(b) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(c) to (f) * * * [Same as parent volume.]

(g) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller, and under the terms of which a finance charge, as defined in this section may be computed in relation to the buyer's balance in the account from time to time.

(h) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under

which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(i) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees, and cash sale prices for services, if any, and for accessories and their installation and for delivery, servicing, repairing, or improving the goods.

(j) "Official fees" means the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(k) to (m) * * * [Same as parent volume.]

(n) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes, but is not limited to, a bank, trust company, investment company, or savings and loan association, if so engaged. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(o) and (p) * * * [Same as parent volume.]

(q) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(2) This act does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this act pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

History: En. Sec. 2, Ch. 282, L. 1959; amd. Sec. 1, Ch. 416, L. 1971; amd. Sec. 137, Ch. 431, L. 1975.

Amendments

The 1975 amendment inserted the subsection (1) designation; deleted "Morris Plan company" after "investment company" in subdivision (1)(n); substituted

the definition of "department" in subdivision (1)(q) for a former definition of "superintendent"; deleted former subdivision (1)(r); redesignated former subdivision (s) as subsection (2); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

74-603. Licensing of sales finance companies required.**Compiler's Notes**

Section 170, Ch. 431, Laws 1975, substi-

tuted "department" in this section for "superintendent."

74-604. Denial, suspension, or revocation of licenses. (1) Renewal of a license originally granted under 74-603 may be denied or a license may be suspended or revoked by the department on the following grounds:

- (a) material misstatement of fact in the application for license;
- (b) willful failure to comply with any provision of this act relating to retail installment contracts;
- (c) defrauding any retail buyer to the buyer's damage;
- (d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at his principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee.

History: En. Sec. 4, Ch. 282, L. 1959; amd. Sec. 138, Ch. 431, L. 1975; amd. Sec. 14, Ch. 185, L. 1977.

Amendments

The 1975 amendment substituted "under section 74-603" for "under this act" in subsection (a); substituted "department" for "superintendent" throughout the section; substituted "until thirty (30) days after written notice has been forwarded by registered mail" for "until after thirty (30) days' written notice thereof given

after such entry forwarded by registered mail" in subsection (c); deleted a subsection (d) which provided for review of an order of the superintendent; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

The 1977 amendment redesignated subsections (a) to (c) as subsections (1) to (3); substituted "certified mail" for "registered mail" in subdivisions (3)(a) and (3)(b); and made minor changes in phraseology, punctuation and style.

74-605. Investigations and complaints. (a) The department may make those investigations it considers necessary and, to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(b) A retail buyer having reason to believe that this act relating to his retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved.

History: En. Sec. 5, Ch. 282, L. 1959; amd. Sec. 139, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted "department" for references to the superin-

tendent of banks or his duly authorized representative; deleted "relating to such specific written complaint" from the end of the section; and made minor changes in phraseology and punctuation.

74-606. Powers of department. (1) The department shall adopt rules necessary to carry out the intent and purposes of this act. All rules of general application shall be filed in the office of the department. A copy of every rule shall be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt him from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this act. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena, or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by it, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon his being brought before the judge, proceed to a hearing of the case. The judge may compel:

- (a) obedience to the subpoena;
- (b) the answering of any question;
- (c) the production of any evidence that may be proper; or
- (d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsections (4)(a), (b), or (c) is punishable by a fine not exceeding \$100 or by imprisonment in the county jail, or both.

History: En. Sec. 6, Ch. 282, L. 1959; amd. Sec. 140, Ch. 431, L. 1975; amd. Sec. 15, Ch. 185, L. 1977.

Amendments

The 1975 amendment substituted "department" for "superintendent" throughout the section; deleted "and promulgate" after "adopt" at the beginning of subsection (a); deleted references to regulations after "rules" throughout the section; and

made minor changes in phraseology and punctuation.

The 1977 amendment redesignated subsections (a) to (c) as subsections (1) to (3); divided former subsection (d) into subsections (4) and (5) and inserted the subdivision designations; substituted "arrest warrant" for "attachment" in two places in subsection (4); and made minor changes in phraseology, punctuation and style.

74-608. Finance charge limitation. (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made \$7 per \$100 per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made \$9 per \$100 per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made—\$11 per \$100 per year.

(b) As to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over \$5,000, \$9 per \$100 per year. This subsection shall not apply to agricultural equipment.

(c) As to services and goods other than as provided under subsections (1)(a) and (1)(b) above:

(i) on so much of the principal balance as does not exceed \$300, \$11 per \$100 per year;

(ii) if the principal balance exceeds \$300 but is less than \$1,000, \$9 per \$100 per year on that portion over \$300;

(iii) if the principal balance exceeds \$1,000, \$7 per \$100 per year on that portion over \$1,000.

(2) Such finance charge shall be computed on the principal balance as determined under 74-607(f) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of \$20 may be charged on any retail installment contract.

(3) When a retail installment contract provides for payment other than in equal successive monthly installments, the finance charge may be

a rate which will provide the same yield as is permitted on monthly payment contracts under subsections (1) and (2) hereof, having due regard for the schedule of payments in the contract.

(4) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive a finance charge as specified herein for the privilege of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed $1\frac{1}{2}\%$ for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

(i) the average daily balance in the account in the billing cycle period;

(ii) the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle; or

(iii) the median amount within a \$10 range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(5) If the finance charge so determined pursuant to (4) above for such monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged, received, and collected for such period.

History: En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963; amd. Sec. 2, Ch. 416, L. 1971; amd. Sec. 1, Ch. 252, L. 1975; amd. Sec. 1, Ch. 284, L. 1977.

Amendments

The 1975 amendment inserted subdivision (a)(2); redesignated former subdivision (a)(2) as (a)(3); and substituted "other than as provided under subsections (1) and (2) above" for "other than motor vehicles" in the introductory clause of subdivision (a)(3).

The 1977 amendment redesignated subsections (a) to (e) as subsections (1) to (5); inserted clause (ii) in subsection (4); and made minor changes in phraseology, punctuation and style.

Constitutionality

This act is constitutional both before and after the 1971 amendments making it applicable to revolving charge accounts; the finance charges permitted by this act are time price differentials included in the price of goods purchased on credit and payable in installments and as such are not subject to constitutional or statutory limitations on interest rates; the act is a codification of the time price doctrine; the act is not a special or local law regu-

lating the rate of interest on money in violation of Art. V, Sec. 26 of the 1889 Constitution since the finance charges imposed pursuant to the act are time price differentials rather than interest and since there is a reasonable basis for the classification and different treatment of those involved in revolving charge transactions; the act does not grant special or exclusive privileges as prohibited by Art. V, Sec. 26 of the 1889 Constitution or interfere with the right to acquire property guaranteed by Art. III, Sec. 3 of the 1889 Constitution since the legislative classifications in the act are constitutionally permissible. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

Revolving Charge Account Sales

This act, prior to amendment in 1971, regulated only "closed end" retail installment contracts and not revolving charge accounts; retailer which imposed finance charges on revolving charge accounts on basis of balance from previous monthly billing cycle prior to 1971 amendment of this act was not in violation of this act since it was inapplicable. *Cecil v. Allied Stores Corp.*, — M —, 513 P 2d 704.

74-610. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or pay-

ments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 74-609 at the rate of the finance charge specified in 74-608(1) and by reclassifying in the case of motor vehicles by its then year model for the term of the refinancing agreement but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under 74-608(2) and an acquisition cost under 74-609 shall not apply in calculating refinance charges on the contract extended, deferred, renewed, or restated. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between:

(1) the refund required for prepayment in full under 74-609 as of the scheduled due date of the first deferred installment, and

(2) the refund required for prepayment in full as of 1 month prior to said date times the number of months in which no scheduled payment is made.

History: En. Sec. 10, Ch. 282, L. 1959;
amd. Sec. 2, Ch. 284, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

74-611. Penalties. (1) Any person who knowingly violates a provision of this act or engages in the business of a sales finance company in this state without a license as provided in this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 74-607 through 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract.

History: En. Sec. 11, Ch. 282, L. 1959;
amd. Sec. 16, Ch. 185, L. 1977; amd. Sec.
3, Ch. 284, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 185 and once by Ch. 284. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 185, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 284, Laws of 1977, made minor changes in phraseology and style.

Repealing Clause

Section 17 of Ch. 185, Laws 1977 read "Section 29-207, R. C. M. 1947, is repealed."

CHAPTER 7—AUCTIONS AND AUCTIONEERS

Section

- 74-701. Sale by auction defined.
- 74-702. Sale by auction.
- 74-703. Sale under written conditions.
- 74-704. Auctioneer's memorandum of sale.
- 74-705. Book of sales.
- 74-706. Auctioneer's authority from the seller.
- 74-707. Auctioneer's authority from the bidder.
- 74-708. Auctioneer—authority and bond.
- 74-709. Reciprocal privileges to nonresident auctioneers.
- 74-710. The bond—sureties, approval and filing.
- 74-711. Auctioneers ex officio.
- 74-712. Assistant—who may act and when.
- 74-713. Auctioneers to designate one place of business—partners.
- 74-714. Penalty.
- 74-715. Enforcement.
- 74-716. Powers of cities and towns.

74-701. (7625) Sale by auction defined. A sale by auction is a sale by public outcry to the highest bidder on the spot.

History: En. Sec. 2410, Civ. C. 1895; re-en. Sec. 5122, Rev. C. 1907; re-en. Sec. 7625, R. C. M. 1921; Sec. 66-213, R. C. M. 1947; redes. 74-701 by Sec. 1, Ch. 263, L. 1977. Cal. Civ. C. Sec. 1792. Field Civ. C. Sec. 896.

Amendments

The 1977 amendment renumbered this section.

74-702. Sale by auction. (1) In a sale by auction of goods by lot, each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection does not apply to any bid at a forced sale.

History: En. Sec. 2-328, Ch. 264, L. 1963; Sec. 87A-2-328, R. C. M. 1947; amd. and redes. 74-702 by Sec. 2, Ch. 263, L. 1977.

Amendments

The 1977 amendment renumbered this section; and made minor changes in phraseology.

74-703. (7628) Sale under written conditions. When a sale by auction is made upon written or printed conditions, those conditions cannot be modified by any oral declaration of the auctioneer except those for his own protection.

History: En. Sec. 2413, Civ. C. 1895; re-en. Sec. 5125, Rev. C. 1907; re-en. Sec. 7628, R. C. M. 1921; Sec. 66-216, R. C. M. 1947; amd. and redes. 74-703 by Sec. 3, Ch. 263, L. 1977. Cal. Civ. C. Sec. 1795. Field Civ. C. Sec. 899.

Amendments

The 1977 amendment renumbered this section; and made minor changes in phraseology.

74-704. (7631) Auctioneer's memorandum of sale. When property is sold by auction, an entry made by the auctioneer in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves.

History: En. Sec. 2416, Civ. C. 1895; re-en. Sec. 5128, Rev. C. 1907; re-en. Sec. 7631, R. C. M. 1921; Sec. 66-219, R. C. M. 1947; amd. and redes. 74-704 by Sec. 4, Ch. 263, L. 1977. Cal. Civ. C. Sec. 1798. Field Civ. C. Sec. 902.

Amendments

The 1977 amendment renumbered this section; and made a minor change in punctuation.

74-705. (4155) Book of sales. (1) Each auctioneer must keep a book and enter all sales showing the name of the owner of the goods sold, to whom sold, the amount paid, and the date of each sale.

(2) The book must be open for inspection by interested persons during normal business hours.

History: En. Sec. 3424, Pol. C. 1895; re-en. Sec. 2132, Rev. C. 1907; re-en. Sec. 4155, R. C. M. 1921; Sec. 66-211, R. C. M. 1947; amd. and redes. 74-705 by Sec. 5, Ch. 263, L. 1977. Cal. Pol. C. Sec. 3306.

Amendments

The 1977 amendment renumbered this section; substituted subsection (2) for "which book must at all times be open for the inspection of any person interested therein"; and made minor changes in phraseology, punctuation and style.

74-706. (7976) Auctioneer's authority from the seller. An auctioneer, in the absence of special authority or usage, has authority from the seller only as follows:

1. to sell by public auction to the highest bidder;
2. to sell for cash only, except for articles usually sold on credit at auction;
3. to warrant as an agent pursuant to 2-130;
4. to prescribe reasonable rules and terms of sale;
5. to deliver the thing sold, upon payment of the price;
6. to collect the price; and
7. to do whatever else is necessary, proper, and usual, in the ordinary course of business, for effecting these purposes.

History: En. Sec. 3160, Civ. C. 1895; re-en. Sec. 5461, Rev. C. 1907; re-en. Sec. 7976, R. C. M. 1921; Sec. 66-201, R. C. M. 1947; amd. and redes. 74-706 by Sec. 6, Ch. 263, L. 1977. Cal. Civ. C. Sec. 2362. Field Civ. C. Sec. 1264.

Amendments

The 1977 amendment renumbered this section; deleted "to the contrary" in the introductory sentence after "special authority or usage"; and made minor changes in phraseology, punctuation and style.

74-707. (7977) Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of sale as prescribed in 74-704.

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R. C. M. 1921; amd. Sec. 11-145, Ch. 264, L. 1963; Sec. 66-202, R. C. M. 1947; amd. and redes. 74-707 by Sec. 7, Ch. 263, L. 1977. Cal. Civ. C. Sec. 2363. Field Civ. C. Sec. 1265.

Amendments

The 1977 amendment renumbered this section; and made minor changes in phraseology and punctuation.

74-708. (4147) Auctioneer—authority and bond. Any citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state after giving a bond in accordance with the provisions of this chapter for the faithful performance of his duties.

History: En. Sec. 3400, Pol. C. 1895; re-en. Sec. 2119, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1921; re-en. Sec. 4147, R. C. M. 1921; Sec. 66-203, R. C. M. 1947; amd. and redes. 74-708 by Sec. 8, Ch. 263, L. 1977. Cal. Pol. C. Sec. 3284.

Amendments

The 1977 amendment renumbered this section; and made minor changes in phraseology and punctuation.

74-709. Reciprocal privileges to nonresident auctioneers. The residency requirements required by this state for an auctioneer are waived for the citizens of any other state to the same extent that the home state of the applicant waives residency requirements for the citizens of this state.

History: En. Sec. 1, Ch. 173, L. 1963; Sec. 66-203.1, R. C. M. 1947; amd. and redes. 74-709 by Sec. 9, Ch. 263, L. 1977.

Amendments

The 1977 amendment renumbered this section; substituted "residency" for "citizenship" in two places; and made minor changes in phraseology.

74-710. (4148) The bond—sureties, approval and filing. (1) Bond must be payable to the state, with one or more sureties, in the sum of \$5,000, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office.

(2) If the auctioneer is not a resident, the bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R. C. M. 1921; amd. Sec. 2, Ch. 173, L. 1963; Sec. 66-204, R. C. M. 1947; amd. and redes. 74-710 by Sec. 10, Ch. 263, L. 1977. Cal. Pol. C. Sec. 3285.

Amendments

The 1977 amendment renumbered this section; and made minor changes in phraseology and style.

74-711. (4149) Auctioneers ex officio. (1) In any county without an auctioneer, the sheriff or a constable thereof is ex officio auctioneer, and is permitted to sell any property at public auction.

(2) He is liable on his official bond for any delinquency as the ex officio auctioneer.

History: En. Sec. 3407, Pol. C. 1895; re-en. Sec. 2126, Rev. C. 1907; re-en. Sec. 4149, R. C. M. 1921; amd. Sec. 7, Ch. 253,

L. 1975; Sec. 66-205, R. C. M. 1947; amd. and redes. 74-711 by Sec. 11, Ch. 263, L. 1977. Cal. Pol. C. Sec. 3291.

Amendments

The 1975 amendment substituted "In any county" for "In any city or town."

The 1977 amendment renumbered this section; and made minor changes in phraseology and style.

74-712. (4150) Assistant—who may act and when. (1) An auctioneer, in the event of inability to attend an auction by reason of sickness, the performance of a duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ an agent or employee to hold the auction in his name and behalf.

(2) The employee shall file with the county clerk of the county an affidavit swearing to faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

History: En. Sec. 3408, Pol. C. 1895; re-en. Sec. 2127, Rev. C. 1907; re-en. Sec. 4150, R. C. M. 1921; Sec. 66-206, R. C. M. 1947; amd. and redes. 74-712 by Sec. 12, Ch. 263, L. 1977. Cal. Pol. C. Sec. 3292.

Amendments

The 1977 amendment renumbered this section; substituted "an agent or employee" for "a copartner or clerk" near the end of subsection (1); and made minor changes in phraseology and style.

74-713. (4151) Auctioneers to designate one place of business—partners. (1) An auctioneer shall designate in writing with the county clerk one place at which he will conduct auctions within any city.

(2) He shall designate, in the same document, his partners, if any, in the business.

(3) He may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets.

History: En. Sec. 3420, Pol. C. 1895; re-en. Sec. 2128, Rev. C. 1907; re-en. Sec. 4151, R. C. M. 1921; Sec. 66-207, R. C. M. 1947; amd. and redes. 74-713 by Sec. 13, Ch. 263, L. 1977. Cal. Pol. C. Sec. 3302.

Amendments

The 1977 amendment renumbered and rewrote this section. For prior version, see Sec. 66-207 in parent volume.

74-714. Penalty. A person convicted of violating a provision of this act shall be fined no more than \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition he shall be liable for damages incurred by any aggrieved party by reason of such violation.

History: En. 74-714 by Sec. 14, Ch. 263, L. 1977.

Title of Act

An act to generally revise the laws relating to auction sales; renumbering and amending sections 66-201 through 66-203,

66-203.1, 66-204 through 66-207, 66-211, 66-213, 66-216, 66-219, and 66-230, R. C. M. 1947; amending section 87A-2-328, R. C. M. 1947; and repealing sections 66-208, 66-209, 66-210, 66-212, 66-214, 66-215, 66-217, 66-218, and 66-220 through 66-229, R. C. M. 1947.

74-715. Enforcement. The provisions of this act shall be enforced by the department of business regulation and the county attorney of the county in which the violation occurred.

History: En. 74-715 by Sec. 15, Ch. 263, L. 1977.

74-716. Powers of cities and towns. Towns and cities may tax, license, and regulate persons, firms, associations, corporations, or other legal entities engaging in or desiring to engage in public auctions and may require a license and charge a fee therefor. Towns and cities may provide penalties for violations of the requirements.

History: En. Sec. 11, Ch. 111, L. 1955; amd. Sec. 1, Ch. 225, L. 1959; Sec. 66-230, R. C. M. 1947; amd. and redes. 74-716 by Sec. 16, Ch. 263, L. 1977.

Amendments

The 1977 amendment renumbered this section; inserted "or other legal entities" in the first sentence; deleted "but such license fee shall not exceed the amount provided in this act for a county license but shall be in addition thereto" at the end of the first sentence; substituted "re-

quirements" for "ordinance" at the end of the second sentence; deleted a former last sentence reading "A city or town license shall not be in lieu of a county license"; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 17 of Ch. 263, Laws 1977 read "Sections 66-208, 66-209, 66-210, 66-212, 66-214, 66-215, 66-217, 66-218, and 66-220 through 66-229, R. C. M. 1947, are repealed."

TITLE 75—SCHOOLS

Chapter

56. Board of public education—board of regents—state board of education, 75-5607 to 75-5607.2, 75-5609 to 75-5619.
57. Superintendent of public instruction, 75-5701, 75-5702, 75-5707, 75-5709.
58. County superintendent, 75-5801, 75-5802, 75-5805, 75-5806, 75-5808.1, 75-5811.
59. School district trustees and officers, 75-5902, 75-5903, 75-5906 to 75-5908, 75-5912, 75-5914.1, 75-5915, 75-5916, 75-5918, 75-5924, 75-5927, 75-5928, 75-5931 to 75-5933, 75-5935, 75-5941.
60. Teacher certification, 75-6001, 75-6008, 75-6012 to 75-6014.
61. Employment of teachers, superintendents and principals, 75-6104, 75-6105.1, 75-6106, 75-6109, 75-6112, 75-6129 to 75-6132.
62. Teachers' retirement system, 75-6201, 75-6202, 75-6204 to 75-6207.1, 75-6208, 75-6209, 75-6211 to 75-6214, 75-6216, 75-6217, 75-6219.
63. Compulsory attendance and tuition agreements, 75-6303, 75-6304, 75-6313, 75-6316, 75-6317, 75-6323.
64. School elections, 75-6404, 75-6410, 75-6412.
65. School district organization and reorganization, 75-6503, 75-6505, 75-6508, 75-6509, 75-6513, 75-6516 to 75-6516.2, 75-6517, 75-6523, 75-6525, 75-6532, 75-6534.
66. Opening and closing of schools, 75-6601, 75-6606, 75-6608, 75-6609.
67. Budget system, 75-6701, 75-6702, 75-6709, 75-6711, 75-6713, 75-6714, 75-6716, 75-6717, 75-6719 to 75-6721, 75-6727.
68. Financial administration, 75-6801 to 75-6803, 75-6805 to 75-6808.1, 75-6809, 75-6809.1, 75-6810 to 75-6811.2, 75-6812, 75-6815 to 75-6820.
69. State equalization aid to public schools, 75-6902 to 75-6908, 75-6912 to 75-6918, 75-6921 to 75-6923, 75-6927.
70. School buses and transportation of pupils, 75-7001 to 75-7006, 75-7008, 75-7013, 75-7016 to 75-7019, 75-7024.
71. School district and county school bonds, 75-7102 to 75-7104, 75-7107, 75-7116, 75-7119, 75-7121, 75-7127, 75-7129.
72. Elementary tuition and special purpose funds, 75-7201 to 75-7205, 75-7214.
73. Public school fund, educational co-operative agreements and grants to schools, 75-7303, 75-7309.
74. School terms and holidays, 75-7402 to 75-7403.1, 75-7406.
75. School accreditation, curriculum and adult education, 75-7502, 75-7503.1, 75-7507, 75-7511, 75-7512, 75-7514.1, 75-7515.1.
76. Textbooks, 75-7604, 75-7605, 75-7607.
77. Vocational and technical education, 75-7709, 75-7716 to 75-7725.
78. Special education for exceptional children, 75-7801 to 75-7809.1, 75-7810, 75-7811, 75-7813.1, 75-7814, 75-7816, 75-7817.
79. Traffic education, 75-7906.
80. School food services, 75-8007.
81. Community college districts, 75-8104, 75-8107, 75-8113, 75-8114, 75-8117, 75-8117.1, 75-8119, 75-8122, 75-8128, 75-8132.
82. School sites, construction and leasing, 75-8205 to 75-8206.1, 75-8207, 75-8209, 75-8211.
83. Miscellaneous provisions, 75-8305, 75-8305.1, 75-8307, 75-8308.1 to 75-8308.7, 75-8310, 75-8312 to 75-8314.
84. Establishment of Montana university system, 75-8404, 75-8408, 75-8427.
85. Administration of university system, 75-8503.3, 75-8504.
86. Finance for university system, 75-8601, 75-8605, 75-8609, 75-8611 to 75-8614.
87. Students in university system, 75-8701 to 75-8711.
88. Miscellaneous provisions relating to university system, 75-8801, 75-8806.
89. Health education—drug and alcohol abuse instruction, 75-8901.
90. Educational broadcasting commission, Repealed—Section 2, Chapter 341, Laws of 1977.
91. Work-study program, 75-9101 to 75-9111.
92. Proprietary post-secondary educational institutions—licensing, 75-9201 to 75-9212, 75-9215 to 75-9223.
93. Commission on federal higher education programs, 75-9301 to 75-9303.
94. Resident student financial assistance program, 75-9401 to 75-9408.

CHAPTER 52—LAW ENFORCEMENT ACADEMY

75-5205. Advisory board.**Compiler's Notes**

Section 13, Ch. 417, Laws 1977, substituted a reference to the department of fish

and game in the first sentence for "Montana fish and game commission."

CHAPTER 56—BOARD OF PUBLIC EDUCATION—BOARD OF REGENTS
—STATE BOARD OF EDUCATION**Section**

75-5607. Board of public education—powers and duties.

75-5607.1. Regents to supervise community college districts.

75-5607.2. Employment of a professional assistant to the board of public education—term—compensation—staff.

75-5609. Definitions.

75-5610. Composition of boards—appointments—terms—oath.

75-5611. Appointment of commissioner of higher education—term—compensation—staff.

75-5612. Officers of boards—quorum.

75-5613. Quarterly meetings of boards—called meetings—notice of meetings.

75-5614. Per diem of board members—expenses.

75-5615. Combined boards as state board—budget review—officers—meetings—quorum.

75-5616. Adoption of rules—seal—record of proceedings.

75-5617. Division of powers among boards.

75-5618. Incumbent members of board of education retained—new appointments.

75-5619. Student representative on board of regents—term.

75-5601 to 75-5606. Repealed.**Repeal**

Sections 75-5601 to 75-5606 (Secs. 2 to 7, Ch. 5, L. 1971; Sec. 1, Ch. 352, L. 1971), relating to the board of education, were

repealed by Sec. 16, Ch. 344, Laws 1973.

For new law, see secs. 75-5609 to 75-5619. Board of education in repealed sections was created by sec. 82A-501.

75-5607. Board of public education—powers and duties. The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 75-6002 and 75-6011;

(2) consider the suspension or revocation of teacher certificates and appeals from the denial of teacher certification in accordance with the provisions of 75-6010;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 75-6917;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 75-7004;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 75-7403;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 75-7404 and 75-7405;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 75-7501 and 75-7502;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 75-7511;

(9) as the governing board of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of 75-7702;

(10) consider applications for postsecondary vocational-technical center designation in accordance with the provisions of 75-7707;

(11) for the purposes of postsecondary vocational-technical centers, approve or disapprove programs and budgets, direct the distribution of moneys in support of such budgets, determine tuition rates and fees, and enter into lease agreements or real property purchases in accordance with the postsecondary vocational-technical center provisions of the vocational education chapter of this title.

(12) adopt policies for the conduct of special education in accordance with the provisions of 75-7802;

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature.

History: En. 75-5607 by Sec. 8, Ch. 5, L. 1971; amd. Sec. 1, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted "public" before "education" in the introductory phrase; deleted subdivisions (8), (14), and (15); changed the subdivision designations accordingly; and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

Compiler's Notes

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Cross-References

Division of powers among boards, sec. 75-5617.

75-5607.1. Regents to supervise community college districts. The board of regents of higher education shall:

(1) supervise community college districts in accordance with the provisions of 75-8103 and 75-8119; and

(2) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with the community college districts chapter of this title.

History: En. 75-5607.1 by Sec. 2, Ch. 266, L. 1977.

Title of Act

An act for the general revision and clarification of laws relating to education.

75-5607.2. Employment of a professional assistant to the board of public education—term—compensation—staff. (1) The board of public education may employ a professional assistant and may employ a secretary to perform the duties required of it.

(2) The board of public education may prescribe the term, duties, and compensation of its professional assistant.

(3) The board of public education may provide office space for its professional assistant to carry out his duties.

History: En. Sec. 1, Ch. 268, L. 1977.

Title of Act

An act authorizing the board of public education to employ a professional as-

sistant and secretary; amending section 75-5612, R. C. M. 1947.

75-5608. Repealed.**Repeal**

Section 75-5608 (Sec. 9, Ch. 5, L. 1971), relating to powers and duties of board of

education, was repealed by Sec. 16, Ch. 344, Laws 1973. For new law, see secs. 75-5609 to 75-5619.

75-5609. Definitions. (1) The board of public education is the board created by article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) "Board of regents" means the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The state board of education is the board composed of the board of public education and the board of regents as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

(4) "Commissioner" means the commissioner of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

History: En. Sec. 1, Ch. 344, L. 1973.

article X, section 9 of the 1972 Montana constitution; to assign powers and duties to the boards; to amend sections 79-2002 and 82-401, R. C. M. 1947; and to repeal sections 75-5601 through 75-5606 and 75-5608, R. C. M. 1947.

Title of Act

An act to create the board of public education and the board of regents of higher education, and to establish the state board of education as provided for by

75-5610. Composition of boards — appointments — terms — oath. (1) The board of public education consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner are ex officio nonvoting members of the board of public education.

(2) The board of regents consists of seven (7) members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction and commissioner are ex officio nonvoting members of the board of regents.

(3) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four (4) may be from one (1) congressional district;

(b) Not more than four (4) may be affiliated with the same political party;

(c) The terms of members appointed to each board shall be seven (7) years except as provided in section 11 [75-5619] of this act;

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and such appointment shall preserve the balance required by subsections (a) and (b) above;

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(4) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before he may serve as a member of either board.

History: En. Sec. 2, Ch. 344, L. 1973.

75-5611. Appointment of commissioner of higher education—term—compensation—staff. (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term and duties of the commissioner and shall set his compensation.

(3) The board of regents shall provide sufficient staff and office space to the commissioner for him to carry out his duties.

History: En. Sec. 3, Ch. 344, L. 1973.

75-5612. Officers of boards—quorum. (1) The board of public education and the board of regents may each select a chairman from among their appointed members.

(2) Professional assistant shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The professional assistant shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other such duties as assigned by the board of public education.

History: En. Sec. 4, Ch. 344, L. 1973;
amd. Sec. 2, Ch. 268, L. 1977.

Amendments

The 1977 amendment substituted "may" for "shall" in subsection (1); substituted "Professional assistant" for "The super-

intendent of public instruction" at the beginning of subsection (2); inserted "of higher education" after "commissioner" near the end of subsection (2); added subsection (4); and made a minor change in phraseology.

75-5613. Quarterly meetings of boards—called meetings—notice of meetings. (1) The board of public education and the board of regents shall meet quarterly at the same location on the second Monday of April, July, September and December.

(2) Other meetings of either board may be called by the governor, by the chairman, by the secretary or by four (4) appointed members.

(3) The secretary to each board shall mail notice to each member at least seven (7) days in advance of all meetings of the respective board.

History: En. Sec. 5, Ch. 344, L. 1973.

75-5614. Per diem of board members—expenses. Appointed members of the board of public education and the board of regents are entitled to twenty-five dollars (\$25) per day and travel expenses, as provided for in sections 59-538, 59-539, and 59-801, for each day in attendance at board meetings or in the performance of any duty or service as a board member.

History: En. Sec. 6, Ch. 344, L. 1973;
amd. Sec. 50, Ch. 439, L. 1975.

expenses as provided for in sections 59-538, 59-539 and 59-801" for "their necessary and actual expenses incurred."

Amendments

The 1975 amendment substituted "travel

75-5615. Combined boards as state board—budget review—officers—meetings—quorum. (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning, and for co-ordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education on any two of the dates specified in section 5, subsection (1) [75-5613 (1)].

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight (8) appointed members, four (4) each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

History: En. Sec. 7, Ch. 344, L. 1973.

Commission on Post-Secondary Education

Chapter 490, Laws of 1973, created a temporary commission on post-secondary

education to study and plan for post-secondary education in the state and to report its recommendations to the governor, the legislature and the state board of education by December 1, 1974.

75-5616. Adoption of rules—seal—record of proceedings. The board of public education, the board of regents, and the state board of education each shall:

(a) Adopt rules not inconsistent with the constitution or laws of the state of Montana, necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(b) Adopt and use an official seal to authenticate its official acts; and

(c) Keep a record of its proceedings.

History: En. Sec. 8, Ch. 344, L. 1973.

Transition Schedule—Public Education Rules

Section 27, Ch. 285, Laws 1977 read

"Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204 (3) on and after October 1, 1977. Any such rules and policies in effect on January 1,

1977, may be filed before October 1, 1977, without being subject to the notice and for publication in the administrative code hearing requirements of 82-4204(1)."

75-5617. Division of powers among boards. (1) The powers and duties assigned to the "board of education," "state board of education" or "state board for vocational education" in Title 75 and wherever else appearing in the Revised Codes of Montana, 1947, except in chapters 81 and 84 through 88 of Title 75, subsections (14) and (15) of 75-5607, sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and except as provided in subsection (3) below, are hereby assigned to the board of public education created in article X, section 9, subsection (3) of the 1972 Montana constitution.

(2) The powers and duties assigned in chapters 81 and 84 through 88 of Title 75, R.C.M. 1947, and subsections (14) and (15) of 75-5607 R.C.M. 1947, as well as powers and duties assigned to the "state board of education ex officio regents," "state board of education of the state of Montana, ex officio regents of the Montana university system," "regents," "regents of the greater university system," "state board of regents" or "regents of the Montana system" wherever appearing in the Revised Codes of Montana, including those assigned to the "state board of education" and the "board of education" in sections 28-301 through 28-304, 44-213, 59-1111, 66-505 and 77-909 through 77-911 and excepting as provided in subsection (3) below, are hereby assigned to the board of regents of higher education created by article X, section 9, subsection (2) of the 1972 Montana constitution.

(3) The powers and duties assigned in chapters 1 and 5 of Title 82A, R.C.M. 1947, to the "state board of education" or the "board of education" are hereby assigned to the state board of education composed of the board of public education and the board of regents of higher education as specified in article X, section 9, subsection (1) of the 1972 Montana constitution.

History: En. Sec. 9, Ch. 344, L. 1973.

Compiler's Notes

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in *Board of Public Education v. Judge*, — M —,

538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Sections 77-909 to 77-911 cited in subsections (1) and (2) were amended and renumbered as sections 75-8612 to 75-8614 by Ch. 94, L. 1974.

75-5618. Incumbent members of board of education retained—new appointments. (1) It is the intent of the legislature to provide smooth transition from the board of education provided for by the 1889 constitution to the board of public education and to the board of regents both created by the 1972 Montana constitution.

(2) In accordance with section 6, subsection (3) of the transition schedule of the 1972 Montana constitution, members of the 1889 board of education appointed before July 1, 1973, may continue to serve for the term to which each was appointed. A member appointed to the 1889 board of education before July 1, 1973, who chooses to fulfill his term of office may resign from the 1889 board of education and shall notify the governor of his resignation on or before July 1, 1973; and the governor shall appoint him on or before July 1, 1973, to serve on either the board of public educa-

tion or the board of regents for the remainder of the term for which he was appointed.

(3) Appointments to fill vacancies existing on July 1, 1973, on the board of public education and on the board of regents:

(a) shall be made on or before July 1, 1973, so as to assure full membership on each board; and

(b) shall be for such number of months or years as will cause the expiration of one term on each board on February 1 of each year thereafter.

(4) Appointments to each board in succeeding years shall be made in accordance with section 2, subsection (3)(c) [75-5610 (3) (c)] of this act.

History: En. Sec. 10, Ch. 344, L. 1973.

75-5619. Student representative on board of regents—term. (1) One seat of the appointed members on the board of regents shall be reserved for membership by a student appointed by the governor.

(2) The student shall be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents.

(3) The length of term of the student member shall be determined by the governor for not less than one (1) year and not more than four (4) years.

(4) The provisions of section 2, subsections (3)(a) and (b) [75-5610 (3)(a) and (b)] of this act shall not apply to the student member and shall not affect the balance of the remaining appointive membership on the board of regents.

History: En. Sec. 11, Ch. 344, L. 1973.

CHAPTER 57—SUPERINTENDENT OF PUBLIC INSTRUCTION

Section

75-5701. Definition.

75-5702. Election and qualification.

75-5707. Supervision of schools.

75-5709. Controversy appeal.

75-5701. Definition. As used in this title, unless the context clearly indicates otherwise, "superintendent of public instruction" means that state government official designated as a member of the executive branch by the constitution of Montana.

History: En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, ch. 100, L. 1973. tive branch" for "executive department"; and deleted "section 1 of article VII of" before "the constitution."

Amendments

The 1973 amendment substituted "execu-

75-5702. Election and qualification. A superintendent of public instruction for the state of Montana shall be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of superintendent of public instruction who:

(1) is twenty-five (25) years of age or older at the time of his election;

(2) to (4). * * * [Same as parent volume.]

History: En. 75-5702 by Sec. 11, Ch. 5, requirement in subdivision (1) from thirty to twenty-five years; and made minor changes in phraseology.
L. 1971; amd. Sec. 1, Ch. 17, L. 1973.

Amendments

The 1973 amendment reduced the age

75-5707. Supervision of schools. The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of 75-5929;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of public education in accordance with the provisions of the teacher certification chapter of this title;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 75-6318;

(4) serve on the teachers' retirement board in accordance with the provisions of 82A-212;

(5) prescribe absentee voting forms and rules in accordance with the provisions of 75-6416;

(6) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 75-6528;

(7) approve or disapprove the opening or reopening of a school in accordance with the provisions of 75-6602, 75-6603, 75-6604, or 75-6605;

(8) approve or disapprove school isolation within the limitations prescribed by 75-6608;

(9) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 75-6702 and prescribe the school budget format in accordance with the provisions of 75-6704 and 75-7209;

(10) establish a system of communication for calculating joint district revenues in accordance with the provisions of 75-6721;

(11) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 75-6725 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 75-6729;

(12) generally supervise the school financial administration provisions as prescribed by 75-6802;

(13) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 75-6806(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 75-5809;

(14) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 75-6903 and 75-6904;

(15) distribute state equalization aid in support of the foundation program in accordance with the provisions of 75-6908, 75-6918, and 75-6919;

(16) estimate the statewide equalization level for the foundation program in accordance with the provisions of 75-6920;

(17) distribute state impact aid in accordance with the provisions of 75-6925;

(18) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 75-7005;

(19) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 75-7207;

(20) request, accept, deposit, and expend federal moneys in accordance with the provisions of 75-7303;

(21) authorize the use of federal moneys for the support of an inter-local cooperative agreement in accordance with the provisions of 75-7306 and 75-7307;

(22) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 75-7308;

(23) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 75-7404 and 75-7405;

(24) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with such standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 75-7501 and 75-7502;

(25) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 75-7505 and 75-7506;

(26) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 75-7511;

(27) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks chapter of this title;

(28) administer and perform the duties as the executive officer of the board of public education for vocational education in accordance with the provisions of 75-7703;

(29) consider applications for the designation of a postsecondary vocational-technical center in accordance with the provisions of 75-7707;

(30) establish a fund for the handling of postsecondary vocational-technical center fees in accordance with the provisions of 75-7714;

(31) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 75-7803;

(32) administer the traffic education program in accordance with the provisions of 75-7904;

(33) administer the school food services program in accordance with the provisions of 75-8002, 75-8003, and 75-8004;

(34) review school building plans and specifications in accordance with the provisions of 75-8206;

(35) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 75-8310; and

(36) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.

History: En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973; amd. Sec. 3, Ch. 266, L. 1977; amd. Sec. 1, Ch. 277, L. 1977.

Compiler's Notes

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in *Board of Public Education v. Judge*, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

This section was amended twice in 1977, once by Ch. 266 and once by Ch. 277. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment deleted "state interest and income moneys and" after "distribute" at the beginning of subdivision (17); deleted "the state-wide per census child payment for the state interest and income moneys and" after "estimate"

at the beginning of subdivision (18); deleted from the end of subdivision (18) a reference to section 75-6911; and made minor changes in phraseology.

Chapter 266, Laws of 1977, substituted "board of public education" in subdivisions (2), (25), (29), and (37) for "board of education"; deleted subdivisions (4), (28), (37), and (39), as set out in the parent volume, and renumbered the other subdivisions accordingly; substituted "82A-212" for "section 75-6203" at the end of subdivision (4); deleted "maintain a textbook library" after "license textbook dealers" at the beginning of subdivision (28); deleted "supply a textbook listing" before "in accordance with the provisions of the textbooks chapter" near the end of subdivision (28); and made minor changes in phraseology, punctuation and style.

Chapter 277, Laws of 1977, deleted subdivision (14), as set out in the parent volume, and renumbered the other subdivisions accordingly.

75-5708. Repealed.

Repeal

Section 75-5708 (Sec. 17, Ch. 5, L. 1971), relating to the school census and

the distribution of state interest and income moneys, was repealed by Sec. 15, Ch. 137, Laws 1973.

75-5709. Controversy appeal. The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(1) and (2) * * * [Same as parent volume.]

The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if he deems necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction shall be final, subject to the proper legal remedies in the state courts. Such proceedings shall be commenced no later than sixty (60) days after the date of the decision of the superintendent of public instruction.

In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

History: En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974.

Amendments

The 1974 amendment rewrote the paragraph following clause (2) which read: "The superintendent of public instruction shall make his decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee, documents presented at the hearing, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the

superintendent of public instruction shall be final, subject to adjudication or the proper legal remedies in the state courts."

Constitutionality

This section violated neither Article VII, § 4(2) nor Article X, § 8 of the 1972 Montana Constitution. School District No. 12, Phillips County v. Hughes, — M —, 552 P 2d 328.

75-5710, 75-5711. Repealed.**Repeal**

Sections 75-5710 and 75-5711 (Secs. 1, 2, Ch. 372, L. 1971), relating to educational

television, were repealed by Sec. 7, Ch. 215, Laws 1974. For present provisions see Sec. 75-9001 et seq.

CHAPTER 58—COUNTY SUPERINTENDENT**Section**

75-5801. **Definition.**

75-5802. **Election and qualification.**

75-5805. **County superintendent—powers and duties.**

75-5806. **Additional positions.**

75-5808.1. **County superintendent authorized to request, accept, and disburse federal, state, and private moneys.**

75-5811. **Controversy appeals and hearings.**

75-5801. Definition. As used in this title, unless the context clearly indicates otherwise, "county superintendent" means the county government official who is the school officer of the county.

History: En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973.

is the school officer of the county" at the end of the section for "designated as the school officer of the county by section 5 of article XVI of the constitution of Montana."

Amendments

The 1973 amendment substituted "who

75-5802. Election and qualification. A county superintendent shall be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent shall be elected at the general election preceding the expiration of the term of office of the incumbent.

Any person shall be qualified to assume the office of the county superintendent who:

(1) is a qualified elector;

(2) and (3). * * * [Same as parent volume.]

History: En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973.

clause (1) for a clause reading "possesses the qualifications required by the constitution of the state of Montana."

Amendments

The 1973 amendment substituted a new

75-5805. County superintendent—powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts and fill additional trustee position vacancies in accordance with the provisions of 75-5903, 75-5904, and 75-5905;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 75-5916;

(3) fill by appointment any trustee position vacancies when required under the provisions of 75-5918;

(4) register the teacher certificate or emergency authorization of employment of any person employed in the county as a teacher, principal, or district superintendent in accordance with the provisions of 75-6106;

(5) act on each tuition application submitted to him in accordance with the provisions of 75-6313, 75-6314, 75-6315, and 75-6316 and transmit the tuition information required by 75-6317;

(6) file a copy of the audit report for a district in accordance with the provisions of 75-6807;

(7) classify districts in accordance with the provisions of 75-6503;

(8) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 75-6504;

(9) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(10) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 75-6538 and 75-6539;

(11) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 75-6602, 75-6603, 75-6604, or 75-6606;

(12) process and when required, act on school isolation applications in accordance with the provisions of 75-6608;

(13) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(14) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 75-6804;

(15) quarterly, unless otherwise provided by law, order the county treasurer to apportion state moneys, county school moneys, and any other school moneys subject to apportionment in accordance with the provisions of 75-6805, 75-6909, 75-6914, 75-6919, 75-6921, 75-7022, or 75-7023;

(16) act on any request to transfer average number belonging (ANB) in accordance with the provisions of subsection (3) of 75-6903;

(17) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 75-6911 and 75-6920 and the other general fund revenue provisions of the general fund chapter of this title;

(18) compute the revenues and the district and county levy requirements for each fund included on each district's final budget and report

such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds chapters of this title;

(19) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 75-7003, 75-7020, or 75-7022;

(20) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 75-7519 or 75-7603;

(21) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 75-7607 and otherwise comply with the textbook dealer provisions of this title;

(22) act on district requests to allocate federal moneys for indigent children for school food services in accordance with the provisions of 75-8006; and

(23) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, or the rules of the superintendent of public instruction.

History: En. 75-5805 by Sec. 23, Ch. 5, L. 1971; amd. Sec. 4, Ch. 266, L. 1977.

trict"; deleted "or 75-6323" from the end of subdivision (6); substituted "board of public education" in subdivision (23) for "board of education"; deleted "and regulations" after "rules" in subdivision (23); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment deleted "or a school's extracurricular fund" in subdivision (6) after "audit report for a dis-

75-5806. Additional positions. In his capacity as county superintendent, he also shall serve as:

(1) the chairman of the county transportation committee, as prescribed by 75-7014;

(2) a member of the high school boundary commission of the county, as prescribed by 75-6521;

(3) an attendance officer for a district under the conditions prescribed by 75-6305; and

(4) the clerk of a joint board of trustees under the conditions prescribed by 75-5928.

History: En. 75-5806 by Sec. 24, Ch. 5, L. 1971; amd. Sec. 2, Ch. 277, L. 1977.

subdivisions (1) and (2); redesignated the other subdivisions accordingly; and made minor changes in style. For prior version, see parent volume.

Amendments

The 1977 amendment deleted former

75-5808.1. County superintendent authorized to request, accept, and disburse federal, state, and private moneys. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept moneys made available from federal, state, or private sources for purposes of public education in those districts which do not employ a district superintendent or other districts.

(2) Subject to applicable federal and state guidelines and, in the case of moneys received from private sources, subject to any guidelines fixed

by the donor, a county superintendent may, in his discretion, disburse moneys received under this section to one or more of the public elementary and high school districts, which do not employ a district superintendent, according to their needs. The county superintendent shall supervise the utilization of such moneys with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of moneys received under this section.

History: En. 75-5808.1 by Sec. 1, Ch. 238, L. 1977.

Title of Act

An act to authorize county superintendents of schools to request, accept, and

disburse moneys available from federal, state, and private sources for purposes of public education in those districts which do not employ a district superintendent or other districts.

75-5810. Repealed.

Repeal

Section 75-5810 (Sec. 28, Ch. 5, L. 1971),

relating to the school census, was repealed by Sec. 15, Ch. 137, Laws 1973.

75-5811. Controversy appeals and hearings. The county superintendent shall hear and decide all matters of controversy arising in his county as a result of decisions of the trustees of a district in the county. When appeals are made under section 75-6104 relating to the termination of services of a tenure teacher or under section 75-6107 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. Furthermore, he shall hear and decide all controversies arising under:

(1) section 75-6315 or 75-6316 relating to the approval of tuition applications; or

(2) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. He shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy which is made by the county superintendent shall be based upon the facts established at such hearing.

The decision of the county superintendent may be appealed to the superintendent of public instruction and, if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

History: En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974.

Amendments

The 1974 amendment inserted the second sentence in the first paragraph; de-

leted a clause (2), relating to decisions of controversies arising under section 75-6104 on termination of services of a tenure teacher; and designated former clause (3) as (2).

Constitutionality

This section violated neither Article VII, § 4(2) nor Article X, § 8 of the 1972

Montana Constitution. School District No. 12, Phillips County v. Hughes, — M —, 552 P 2d 328.

CHAPTER 59—SCHOOL DISTRICT TRUSTEES AND OFFICERS**Section**

- 75-5902. Number of trustee positions.
- 75-5903. Request and determination of number of high school district additional trustee positions.
- 75-5906. Election and term of office.
- 75-5907. Legislative intent to elect less than majority of trustees.
- 75-5908. Determination of terms after creation or consolidation of elementary districts.
- 75-5912. Annual election.
- 75-5914.1. Nomination of candidates by petition in first class elementary district.
- 75-5915. Conduct of election and ballot.
- 75-5916. Qualification and oath.
- 75-5918. Filling vacated trustee position, appointee qualification, and term of office.
- 75-5924. Membership of elected trustees of high school district operating county high school and nomination of candidates.
- 75-5927. Organization and officers.
- 75-5928. Joint board of trustees organization and voting membership.
- 75-5931. Travel reimbursement and joint board of trustees secretary compensation.
- 75-5932. General powers and duties and record of acts.
- 75-5933. Powers and duties.
- 75-5935. Clerk of the district.
- 75-5941. Personal liability of trustees.

75-5902. Number of trustee positions. The number of trustee positions in a district shall vary in the following manner according to the type of district:

(1) The number of trustee positions in each elementary district shall vary according to the district's classification, as established by section 75-6503;

(a) and (b) * * * [Same as parent volume.]

(c) there shall be three (3) trustee positions in a third class elementary district, however upon the majority vote of the board of trustees, the number may be increased to five (5) trustee positions at the next trustee election, provided that notice of such action of the board of trustees be published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of such trustee election.

(2) and (3) * * * [Same as parent volume.]

History: En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975.

sion for increasing the number of trustee positions in third class elementary districts at the end of subdivision (1)(c).

Amendments

The 1975 amendment added the provi-

75-5903. Request and determination of number of high school district additional trustee positions. As provided in subsection (2) (b) of section 75-5902, each high school district, except a high school district operating a county high school, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without representation on the high school district trus-

tees under the provision of subsection (2) (a) of section 75-5902, request the establishment of such additional trustee positions.

A request for additional trustee positions shall be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(1) to (3). * * * [Same as parent volume.]

The number determined in subsection (3) above shall be the number of additional trustee positions except that the number of additional trustee positions shall not exceed four (4) in a first or second class high school district or two (2) in a third class high school district except when two-thirds ($2/3$) or more of the high school enrollment of the high school district and two-thirds ($2/3$) or more of the taxable valuation of the high school district are located outside of the elementary district which has its trustees placed on the high school district trustees. When this situation exists, three (3) additional trustees shall be elected from the elementary school districts where the high school is not located and one (1) additional trustee shall be elected at large in the high school district.

History: En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973.

Amendments

The 1973 amendment combined the two final paragraphs; deleted provision for the designation of an additional trustee position by the county superintendent; in-

serted "When this situation exists, three (3) additional trustees shall be elected from the elementary school districts where the high school is not located" in the final sentence; and substituted "one (1) additional trustee" for "The person who fills such additional trustee position" in the final sentence.

75-5906. Election and term of office. Every trustee position prescribed by this title shall be subject to election and the term of office for each position shall be three (3) years unless it is otherwise specifically prescribed by this title.

History: En. 75-5906 by Sec. 35, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1975.

Amendments

The 1975 amendment deleted "except

the trustee positions of a high school district operating a county high school" before "shall be subject to election."

75-5907. Legislative intent to elect less than majority of trustees. It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees shall not regularly expire and be subject to election on the same regular school election day. Therefore, in elementary districts, there shall not be more than three (3) trustee positions in first class districts, two (2) trustee positions in second class districts, or third class districts having five (5) trustee positions, or one (1) trustee position in third class districts having three (3) trustee positions regularly subject to election at the same time. In high school districts there shall not be more than two (2) additional trustee positions in first or second class districts, or more than one (1) in third class districts regularly subject to election at the same time. In high school dis-

tricts operating a county high school, there shall not be more than two (2) trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one (1) trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

While it is the intention of the legislature that the terms of a majority of trustees of any district shall not regularly expire and be subject to election at the same time, it is recognized that the following circumstances, relating to the terms of trustees appointed to newly created positions or to positions vacated by death, resignation or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time:

(1) the creation of a new elementary district under the provisions of section 75-6518;

(2) the consolidation of two (2) or more elementary districts to form an elementary district under the provisions of section 75-6506;

(3) the establishment of additional trustee positions of a high school district under the provisions of section 75-5904 or 75-5905;

(4) the change of a district's classification under the provisions of section 75-6503;

(5) the filling of a trustee position which has become vacant under the provisions of section 75-5917 or any other provision of law;

(6) the establishment of additional elementary trustee positions under the provisions of section 75-5902 (c); or

(7) any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election.

History: En. 75-5907 by Sec. 36, Ch. 5, L. 1971; amd. Sec. 2, Ch. 103, L. 1975; amd. Sec. 2, Ch. 122, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 103 and once by Ch. 122. Neither amendatory act mentioned or included the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 103, Laws of 1975, inserted "or third class districts having five (5) trustee positions" after "two (2) trustee positions in second class districts" near the middle of the first paragraph; inserted "having three (3) trustee positions" before "regularly subject to election" near the middle of the first paragraph; inserted item (6) in the second paragraph; and made minor changes in phraseology and style.

Chapter 122, Laws of 1975, added the last sentence to the first paragraph.

75-5908. Determination of terms after creation or consolidation of elementary districts. Whenever the trustees are elected at one (1) regular school election under the circumstances described in subsections (1) and (2) of section 75-5907, the members who are elected shall draw by lot to determine their terms of office. Such terms of office by trustee position shall be:

(1) three (3) for three (3) years, two (2) for two (2) years, and two (2) for one (1) year in a first class elementary district;

(2) two (2) for three (3) years, two (2) for two (2) years, and one (1) for one (1) year in second class elementary districts and third class elementary districts having five (5) trustee positions; or

(3) one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year in a third class elementary district having three (3) trustee positions.

History: En. 75-5908 by Sec. 37, Ch. 5, L. 1971; amd. Sec. 3, Ch. 103, L. 1975.

Amendments

The 1975 amendment substituted "second class elementary districts" for "a

second class elementary district" and added "and third class elementary districts having five (5) trustee positions" at the end of subsection (2); and added "having three (3) trustee positions" at the end of subsection (3).

75-5912. Annual election. In each district an election of trustees shall be conducted annually on the regular school election day, the first Tuesday of April. Election of trustees shall comply with the election provisions of this title.

History: En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974.

excused under the provisions of section 75-5914" at the end of the first sentence.

Amendments

The 1974 amendment substituted "the first Tuesday of April" for "the first Saturday of April" in the first sentence and deleted "unless an election of trustees is

Effective Date

Section 3 of Ch. 109, Laws 1974 read "This act shall become effective on January 1, 1975."

75-5914. Repealed.

Repeal

Section 75-5914 (Sec. 43, Ch. 5, L. 1971), relating to nomination of trustee candidates in first class elementary districts by a nominating caucus, was re-

pealed by Sec. 3, Ch. 165, Laws 1973. For new law, see sec. 75-5914.1. Section 1 of Ch. 259, Laws 1973 purported to amend this section. Under the provisions of section 43-515, the amendment is void.

75-5914.1. Nomination of candidates by petition in first class elementary district. Any twenty (20) electors qualified under the provisions of section 75-6410 of any first class elementary district may nominate by petition as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy shall be submitted to the clerk of the district not less than forty (40) days before the regular school election day at which he is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated shall also be indicated. The election shall be conducted with the ballot as specified in section 75-5915.

History: En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973.

petition in first class elementary districts; amending section 75-5915, R. C. M. 1947; and repealing section 75-5914, R. C. M. 1947.

Title of Act

An act providing for nomination by

75-5915. Conduct of election and ballot. The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of section 75-6406, except as provided in section 75-5914.1. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections. Any elec-

tor qualified to vote under the provisions of section 75-6410 may vote at a trustee election. The trustee election ballots shall be substantially in the following form:

OFFICIAL BALLOT SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: * * * [Same as parent volume.]

In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need to be used. The ballot also shall be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

When additional trustees in a high school district are to be elected, a separate ballot shall be used in each nominating district showing only the names of those candidates for which the electors of such district are entitled to vote.

History En. 75-5915 by Sec. 44, Ch. 5, L. 1971, amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 165 and once by Ch. 259. Neither amendatory act mentioned or entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 165, Laws of 1973, changed the statutory reference in the first sentence from 75-5914 to 75-5914.1; and deleted "except that write-in voting shall not be available in a first class elementary district" from the end of the second paragraph.

Chapter 259, Laws of 1973, deleted the reference to section 75-5914 at the end of the first sentence and made an additional deletion identical to that made by chapter 165.

Repealing Clause

Section 3 of Ch. 165, Laws 1973 read "Section 75-5914, R. C. M. 1947, is repealed."

Write-in Votes

Provisions as to marking of ballots are mandatory, and thus ballots on which stickers were pasted bearing the name of write-in candidate and having a pre-printed x in the box beside the name were not valid votes because voters had failed to mark the ballot as required by law. State ex rel. Browne v. District Court, — M —, 539 P 2d 1182.

75-5916. Qualification and oath. Any person who receives a certificate of election as a trustee under the provisions of section 75-6423 shall not assume the trustee position until he has qualified. Such person shall qualify by completing and filing an oath of office with the county superintendent not more than fifteen (15) days after the receipt of the certificate of election. After a person has qualified for a trustee position, he shall hold such position for the term of the position and until his successor has been elected or appointed and has been qualified.

If the elected person does not qualify in accordance with this requirement, a person shall be appointed in the manner provided by section 75-5918 and shall serve until the next regular election.

History: En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "more" for "less" in the second sentence of the first paragraph.

75-5918. Filling vacated trustee position, appointee qualification, and term of office. (1) Whenever a trustee position becomes vacant in any district except a third-class district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment.

(2) Whenever a trustee position becomes vacant in a third-class district, the remaining members of the trustees shall declare such position vacant and notify the county superintendent of the vacancy. The county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

(3) Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

(4) Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified.

History: En. 75-5918 by Sec. 47, Ch. 5, L. 1971; amd. Sec. 3, Ch. 122, L. 1975; amd. Sec. 5, Ch. 266, L. 1977.

Amendments

The 1975 amendment substituted "in any district except a third class district"

for "in a first or second class district" in the first sentence of the first paragraph.

The 1977 amendment inserted the subsection designations; substituted "within 15 days" in subsection (3) for "in not less than fifteen (15) days"; and made minor changes in phraseology and style.

75-5920 to 75-5923. Repealed.

Repeal

Sections 75-5920 to 75-5923 (Secs. 49 to 52, Ch. 5, L. 1971), relating to trustees

membership of a high school district operating a county high school, were repealed by Sec. 7, Ch. 122, Laws 1975.

75-5924. Membership of elected trustees of high school district operating county high school and nomination of candidates. The trustees of a high school district operating a county high school shall be composed of the following:

(1) four (4) trustee positions filled by members residing in the elementary district where the county high school building is located; and

(2) three (3) trustee positions filled by members one of whom resides in each of the three (3) trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts and, unless it is impossible, such districts shall have coterminous boundaries with elementary district boundaries.

The provisions of section 75-5913 shall govern the nomination of candidates for the trustee election prescribed in this section.

History: En. 75-5924 by Sec. 53, Ch. 5, L. 1971; amd. Sec. 4, Ch. 122, L. 1975.

Amendments

The 1975 amendment rewrote the introductory clause which read: "Whenever the election of the trustees of a high

school district operating a county high school has been approved by the electorate, the trustees shall be composed of the following" and deleted "and board of county commissioners" after "county superintendent" in the last sentence of subsection (2).

75-5925. Repealed.**Repeal**

Section 75-5925 (Sec. 54, Ch. 5, L. 1971), relating to determination of terms of office and filling a vacancy in a trustee

position of a high school district operating a county high school, was repealed by Sec. 7, Ch. 122, Laws 1975.

75-5927. Organization and officers. The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees but not later than the third Saturday of April. In order to organize, the trustees of the district shall be given notice of the time and place where the organization meeting will be held and, at such meeting, they shall choose one of their number as the chairman. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who shall be a member of the board.

The chairman of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. He shall perform the duties prescribed by this title and any other duties that normally pertain to such officer.

History: En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975.

Amendments

The 1975 amendment deleted "except that if the trustees of a high school dis-

trict operating a county high school are not elected, they shall annually organize as the governing board at the first regular meeting of January" at the end of the first sentence.

75-5928. Joint board of trustees organization and voting membership. Whenever the trustees of a high school district operating a county high school and the trustees of the elementary district where the county high school building is located deem it to be within the best interests of the two districts, they may form a joint board of trustees for the purpose of coordinating the educational program of both districts. When a joint board of trustees is formed, all of the members of both districts' trustees shall be members of the joint board of trustees, and each member shall have the right to participate in the meetings but voting on matters considered by the joint board shall be limited by the provisions of this section.

At the first meeting of the joint board of trustees, there shall be a chairman of the joint board of trustees selected from among the membership. A secretary of the joint board shall be selected from the membership. The chairman, when selected as a voting member, shall not be disqualified from voting because of his position of chairman of the board. The secretary shall not be a voting member except that he shall cast the deciding vote when three (3) successive ballots have resulted in a tie vote of the joint board of trustees.

The voting membership of the joint board of trustees shall be equalized between the trustee membership of the two participating districts. After

the selection of the chairman and the secretary, if necessary, the voting membership shall be:

(1) and (2) * * * [Same as parent volume.]

Each voting member shall be entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

History: En. 75-5928 by Sec. 57, Ch. 5, the second sentence of the second paragraph.
L. 1971; amd. Sec. 6, Ch. 122, L. 1975.

Amendments

The 1975 amendment deleted "If the county superintendent is a member of the high school trustees, he shall be the secretary; otherwise" at the beginning of

Repealing Clause

Section 7 of Ch. 122, Laws 1975 read "Sections 75-5920, 75-5921, 75-5922, 75-5923, and 75-5925, R. C. M. 1947, are repealed."

75-5931. Travel reimbursement and joint board of trustees secretary compensation. The members of the trustees of any district shall not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a county high school or the secretary of a joint board of trustees may be compensated for his services as the secretary. The members of the trustees who reside over three (3) miles from the trustees' meeting place shall be reimbursed at the rate as provided in section 59-801, R. C. M. 1947 for every mile necessarily traveled between their residence and the meeting place, and return in attending the regular and special meetings of the trustees, and all trustees shall be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

History: En. 75-5931 by Sec. 60, Ch. 5, L. 1971; amd. Sec. 1, Ch. 62, L. 1974.

1947" near the middle of the section for "eight cents (\$.08)."

Amendments

The 1974 amendment substituted "at the rate as provided in section 59-801, R. C. M.

Effective Date

Section 2 of Ch. 62, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 2, 1974.

75-5932. General powers and duties and record of acts. (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title; and

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money, with the name of any person or business to whom payment is made, and showing the service rendered or goods furnished. A written copy of the minutes shall be

made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting. If a board does not regularly meet on a monthly basis, a meeting of the trustees shall be called no later than 1 month following each regular meeting for the purpose of approving the minutes of the previous meeting.

History: En. 75-5932 by Sec. 61, Ch. 5, L. 1971; amd. Sec. 1, Ch. 192, L. 1975; amd. Sec. 6, Ch. 266, L. 1977.

regulations" after "rules" in subdivision (1)(b); and made minor changes in phraseology, punctuation and style.

Amendments

The 1975 amendment added the provision pertaining to minutes kept at board meetings.

The 1977 amendment inserted the subsection designations; redesignated former subdivisions (1) and (2) as subdivisions (1)(a) and (1)(b); substituted "board of public education" in subdivision (1)(b) for "board of education"; deleted "and

Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

75-5933. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall have the power and it shall be its duty to perform the following duties or acts:

(1) employ or dismiss a teacher, principal or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board may deem necessary, accepting or rejecting such recommendation as the trustees shall in their sole discretion determine, in accordance with the provisions of the school personnel chapter of this title;

(2) to (7) * * * [Same as parent volume.]

(8) conduct the fiscal business of the district in accordance with the provisions of the school financial administration chapter of this title;

(9) to (16) * * * [Same as parent volume.]

(17) establish and maintain the school food services of the district in accordance with the provisions of the school food services chapter of this title;

(18) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of education or the rules and regulations of the superintendent of public instruction; and

(19) may require that all children at the time they are first enrolled in school, or within a reasonable time thereafter, be successfully immunized against those communicable diseases, as recommended by the state department of health and environmental sciences.

The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice and shall be set by the state department of health and environmental sciences.

A child may be exempted from this requirement upon certification from a licensed physician stating that the physical condition of the child is such that the immunization would seriously endanger his life or health, or a written statement signed by one (1) parent or guardian that he is an adherent of a religious denomination whose religious teachings are opposed to the immunization.

History: En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 69, and once by Ch. 280. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 69, Laws of 1973, added subdivision (19), including the last two paragraphs of the section.

Chapter 280, Laws of 1973, substituted "other assistant" for "district superintendent" in subdivision (1); and inserted "upon the recommendation of the district superintendent, . . . sole discretion determined" in subdivision (1).

Subd. 18, Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

75-5935. Clerk of the district. As provided in 75-5927, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees shall have one of their members or a district employee act as clerk for the meeting and such person shall supply the clerk with a certified copy of the proceedings. The clerk of the district also shall be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(1) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(2) prepare the annual trustees' report required under the provisions of subsection (5) of 75-6806.

History: En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977.

Amendments

The 1977 amendment deleted a former subdivision (3); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

75-5936 to 75-5938. Repealed.

Repeal

Sections 75-5936 to 75-5938 (Secs. 65 to 67, Ch. 5, L. 1971), relating to the school

census, were repealed by Sec. 15, Ch. 137, Laws 1973.

75-5940. Repealed.

Repeal

Section 75-5940 (Sec. 69, Ch. 5, L. 1971), relating to the liability of the trustees to

pay judgments against the district, was repealed by Sec. 9, Ch. 234, Laws 1977.

75-5941. Personal liability of trustees. The trustees of each district shall be responsible for the proper administration and utilization of all moneys of the district in accordance with the provisions of law and this title. Failure or refusal to do so shall constitute grounds for removal from office. Those trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.

History: En. 75-5941 by Sec. 70, Ch. 5,
L. 1971; amd. Sec. 2, Ch. 91, L. 1973.

Amendments

The 1973 amendment substituted "illegal" for "improper" in the third sentence.

CHAPTER 60—TEACHER CERTIFICATION

Section

- 75-6001. System of teacher certification—student teacher exception.
- 75-6008. Term of teacher certificates.
- 75-6012. Enactment.
- 75-6013. Designated official.
- 75-6014. Preservation and publication of contracts.

75-6001. System of teacher certification—student teacher exception. In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher certification shall be established and maintained under the provisions of this title and no person shall be permitted to teach in the public schools of the state until he has obtained a teacher certificate or the district has obtained an emergency authorization of employment from the state.

The above certification requirement shall not apply to a student teacher who is hereby defined as a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by such institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

A student teacher, while serving such nonsalaried internship under the supervision of a certificated teacher, shall be accorded the same protection of the laws as that accorded a certificated teacher, and shall, while acting as such student teacher, comply with all rules and regulations of the governing board of the district or public institution and the applicable provisions of section 75-6108 relating to the duties of teachers.

History: En. 75-6001 by Sec. 71, Ch. 5,
L. 1971; amd. Sec. 1, Ch. 396, L. 1973.

Amendments

The 1973 amendment added the second and third paragraphs.

75-6002. Board of education policies.

Cross-References

Board of public education to exercise powers and duties, sec. 75-5617 (1).

75-6008. Term of teacher certificates. Any teacher certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of 5 school fiscal years, except that class 5 provisional certificates shall be valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate shall begin on the first day of July immediately preceding the date of issue. Teacher certificates shall be renewed for similar periods of time on the basis of the board of education policies for teacher certification renewal.

History: En. 75-6008 by Sec. 78, Ch. 5, L. 1971; amd. Sec. 1, Ch. 171, L. 1977.

years, provided by the policies of the board of public education" for "two (2) school fiscal years" at the end of the first sentence; and made minor changes in style.

Amendments

The 1977 amendment substituted "the number of years, up to a maximum of 5

75-6010. Suspension, revocation and denial—appeals.

Cross-References

Board of public education to exercise powers and duties, sec. 75-5617 (1).

75-6012. Enactment. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article 1. Purpose—findings—policy.

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II. Definitions. As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate educational personnel contracts. (1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in his own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of

any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and accepted programs. (1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate cooperation. The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement evaluation. The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

Article VII. Other arrangements. Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect—withdrawal. (1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction—severability. This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History: En. 75-6012 by Sec. 1, Ch. 328,
L. 1977.

Title of Act

An act entering into the interstate agreement on qualification of educational personnel and for related purposes; and providing an effective date.

75-6013. Designated official. The "designated state official" for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

History: En. 75-6013 by Sec. 2, Ch. 328,
L. 1977.

75-6014. Preservation and publication of contracts. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

History: En. 75-6014 by Sec. 3, Ch. 328,
L. 1977.

Effective Date

Section 4 of Ch. 328, Laws 1977 provided the act should be effective on its passage and approval. Approved April 5, 1977.

CHAPTER 61—EMPLOYMENT OF TEACHERS, SUPERINTENDENTS AND PRINCIPALS

Section

- 75-6104. Termination of tenure teacher services.
- 75-6105.1. Notification of nontenure teacher re-election.
- 75-6106. Teacher certification registration.
- 75-6109. Power of teacher over pupils and undue punishment.
- 75-6112. Appointment and dismissal of district superintendent or county high school principal.
- 75-6129. Policy to recognize heritage of American Indians.
- 75-6130. Definitions.
- 75-6131. Teachers of Indian children to be qualified in Indian studies—trustees and noncertified personnel.
- 75-6132. Other schools encouraged to comply with requirements on Indian studies.

75-6104. Termination of tenure teacher services. Whenever the trustees of any district resolve to terminate the services of a tenure teacher under the provisions of subsection (1) of section 75-6103, they shall notify such teacher in writing by registered letter or by personal notification for which a signed receipt is returned before the first day of April of such termination. Such notification shall include a printed copy of section 75-6104, R. C. M. 1947, for the teacher's information. Any tenure teacher who receives a notice of termination may request, in writing ten (10) days after the receipt of such notice, a written statement declaring clearly and explicitly the specific reason or reasons for the termination of his services, and the trustees shall supply such statement within ten (10) days after the request. Within ten (10) days after the tenure teacher receives the statement of reasons for termination, he may request in writing a hearing before the trustees to reconsider their termination action. When a hearing is requested, the trustees shall conduct such a hearing and reconsider their termination action within ten (10) days after the receipt of the request for a hearing. If the trustees affirm their decision to terminate the teacher's employment, the tenure teacher may appeal their decision to the county superintendent who may appoint a qualified attorney at law as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.

History: En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 157 and once by Ch. 218. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 157, Laws of 1974, inserted "by registered letter or by personal notification for which a signed receipt returned" af-

ter "in writing" in the first sentence and inserted the second sentence.

Chapter 306, Laws of 1974, inserted the provision for appointment of an attorney by the county superintendent in the next to last sentence and made a minor change in punctuation.

Notice of Dismissal

Where, after vote by the board of trustees, teacher was notified of his dismissal by superintendent and not the board itself, there was no violation of the statute, since the superintendent's action was a purely ministerial one performed in his capacity as chief executive officer of the trustees. *School District No. 4 v. Colburg*, — M —, 547 P 2d 84.

DECISIONS UNDER FORMER LAW

Notice of Dismissal

Certified letter from chairman of school board to tenure teacher which informed teacher that termination of her services was deemed necessary due to a drop in enrollment of her class was legally sufficient as a notice; this section does not require that the notice contain a statement of appeal procedure. *Schweigert v. Board of Trustees of Evergreen School Dist. No. 50*, — M —, 515 P 2d 85.

Teacher's Petition for Reconsideration of Termination

Teacher who failed to file petition for a formal hearing to reconsider termination until more than forty-five days after receiving notice of termination failed to file request in a timely manner and the right to a hearing under this section had expired; fact that board reaffirmed its decision forty days after receipt of original notification did not revive expired rights. *Schweigert v. Board of Trustees of Evergreen School Dist. No. 50*, — M —, 515 P 2d 85.

75-6105.1. Notification of nontenure teacher re-election. (1) The trustees shall provide written notice to all nontenure teachers who have been re-elected by the fifteenth day of April. Any nontenure teacher who does not receive notice of re-election or termination shall be automatically re-elected for the ensuing school fiscal year. Any nontenure teacher who receives notification of his re-election for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such re-election within twenty (20) days after the receipt of the notice of re-election. Failure to so notify the trustees within twenty (20) days may be considered nonacceptance of the tendered position. The provisions of this section shall not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.

(2) When the trustees notify a nontenure teacher of termination, the teacher may within ten (10) days after receipt of such notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within ten (10) days after receipt of the request the trustees shall furnish such statement to the teacher.

History: En. Sec. 1, Ch. 324, L. 1973; amd. Sec. 1, Ch. 87, L. 1975; amd. Sec. 1, Ch. 142, L. 1975.

Compiler's Notes

This section was amended twice in 1975, once by Ch. 87 and once by Ch. 142. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 87, Laws of 1975, substituted "fifteenth day of April" for "first day of April" at the end of the first sentence in subsection (1).

Chapter 142, Laws of 1975, inserted the subsection designation "(1)" and added subsection (2).

Effective Date

Section 2 of Ch. 87, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 19, 1975.

75-6106. Teacher certification registration. Any person employed as a teacher, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher does not register his certificate with the county superintendent within sixty (60) calendar days after the teacher begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for sixty (60) calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

A teacher employed by a joint district shall register his certificate with the county superintendent of the county in which he is teaching.

History: En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977.

Amendments

The 1977 amendment substituted "coun-

ty in which he is teaching" at the end of the section for "county performing the budgeting functions for the joint district, as defined in section 57-6720."

75-6107. Dismissal of teacher under contract.

Constitutionality

The last two sentences of this section violated neither Article VII, § 4(2) nor Article X, § 8 of the 1972 Montana Constitution. *School District No. 12 v. Hughes*, — M —, 552 P 2d 328.

Teacher's Right to Due Process

School boards in proceedings under this section must observe the elementary and fundamental principles of judicial inquiry; where a teacher is dismissed, dis-

missal must be based upon evidence supporting the specific charge against the teacher and not on other grounds; therefore, where a school board called a teacher to answer for a half-day's absence from school, then proceeded to question him not only about that specific absence but others over a nine-year period and dismissed him, he was entitled to reinstatement. *Board of Trustees of School District No. 9 v. Superintendent of Public Instruction*, — M —, 557 P 2d 1048.

75-6109. Power of teacher over pupils and undue punishment. Any teacher or principal shall have the authority to hold any pupil to a strict accountability for any disorderly conduct in school, on the way to or from school, or during intermission or recess. Whenever a principal shall deem it necessary to inflict corporal punishment in order to maintain orderly conduct of a pupil, he shall administer such corporal punishment without undue anger and only in the presence of a witness. Before any corporal punishment is administered, the parent or guardian shall be notified of the principal's intention to so punish his child; except that in cases of open and flagrant defiance of the teacher, principal, or of the authority of the school, the teacher or principal may administer corporal punishment without giving such notice.

Any teacher in a district not employing a district superintendent or a principal of the school where the teacher is assigned shall have the authority to suspend a pupil for good cause and to administer corporal punishment in the presence of a witness, without undue anger. Where a district superintendent or principal is employed only he shall have the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, he shall notify the trustees immediately of such action, and the trustees shall meet as soon as practicable to consider the suspension action of the teacher.

It shall be the duty of any teacher to report the truancy or incorrigibility of any pupil to the district superintendent, principal, or the trustees, whichever is applicable.

Any teacher or principal who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined not more than \$100.

History: En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977.

Amendments

The 1977 amendment inserted "or principal" after "teacher" throughout the sec-

tion; substituted references to principal for references to teacher in two places in the first paragraph; substituted "a witness" at the end of the second sentence of the first paragraph for "the principal, if there be one"; and added "and to ad-

minister corporal punishment in the presence of a witness, without undue anger" to the end of the first sentence of the second paragraph. For prior version, see parent volume.

75-6112. Appointment and dismissal of district superintendent or county high school principal. The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees, and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts, in the name of the districts, and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than three (3) years and, after the second successive contract, the contract shall be deemed to be renewed for a further term of one (1) year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the expiration of his current contract not later than the first day of February of the last year of such contract.

Whenever a joint board of trustees employs a person as the district superintendent, the elementary district and the county high school shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with

his duties and employment as the district superintendent or county high school principal.

History: En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973.

Amendments

The 1973 amendment inserted "in writing" in the last sentence of the third paragraph.

75-6115 to 75-6128. Repealed.

Repeal

Sections 75-6115 to 75-6128 (Secs. 1 to 14, Ch. 424, L. 1971), comprising the Pro-

fessional Negotiations Act for Teachers, were repealed by Sec. 3, Ch. 117, Laws of 1975. See Sec. 59-1601 et seq.

75-6129. Policy to recognize heritage of American Indians. It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of this act, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

History: En. Sec. 1, Ch. 464, L. 1973.

Title of Act.

An act requiring American Indian studies to be part of the educational background of public school teaching personnel employed on, or in public schools located

in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, and encouraging American Indian studies as part of the educational background of all school personnel employed in the state.

75-6130. Definitions. (1) As used in this act, "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) As used in this act, "instruction" means

(a) a formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;

(b) in-service training developed by the superintendent of public instruction in co-operation with educators of Indian descent and made available to school districts; or

(c) in-service training provided by a local board of trustees, which is developed and conducted in co-operation with local Indian people.

History: En. Sec. 2, Ch. 464, L. 1973.

75-6131. Teachers of Indian children to be qualified in Indian studies—trustees and noncertified personnel. (1) By July 1, 1979, all boards of trustees for elementary and secondary public school districts on, or in public schools located in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, shall employ only those certified personnel who have satisfied the requirements for instruction in American Indian studies as defined in section 2 [75-6130] of this act.

(2) Members of boards of trustees and all noncertified personnel in public school districts on or in the vicinity of Indian reservations are

encouraged to satisfy the requirements for instruction in American Indian studies as defined in section 2 [75-6130] of this act.

History: En. Sec. 3, Ch. 464, L. 1973.

75-6132. Other schools encouraged to comply with requirements on Indian studies. Boards of trustees for all public school districts other than those defined in section 3 [75-6131] above and governing authorities for all nonpublic schools in Montana are encouraged to comply with the provisions and intent of this act.

History: En. Sec. 4, Ch. 464, L. 1973.

75-6133 to 75-6136. Repealed.

Repeal

Sections 75-6133 to 75-6136 (Secs. 1 to 4, Ch. 425, L. 1975), relating to the Indian

Teacher-Training Act of 1975, were repealed by Sec. 5, Ch. 425, Laws of 1975.

CHAPTER 62—TEACHERS' RETIREMENT SYSTEM

Section

- 75-6201. Definitions.
- 75-6202. Retirement system.
- 75-6204. Per diem and expenses.
- 75-6205. Powers and duties of retirement board.
- 75-6206. Financial administration of moneys.
- 75-6207. Method of financing.
- 75-6207.1. Funding for increase in prior retirement allowances.
- 75-6208. Benefits.
- 75-6209. Active membership.
- 75-6211. Membership termination.
- 75-6212. Membership application and creditable service.
- 75-6213. Creditable service for out-of-state employment, employment while on leave, service in the military, red cross, or merchant marine, and prior service.
- 75-6214. Duties of employer.
- 75-6216. Guarantee by state.
- 75-6217. Penalty for fraud—correction of erroneous payments.
- 75-6219. Establishment of a tax-deferred annuity program.

75-6201. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 75-6202.

(2) "Retirement board" means the retirement system's governing board provided for in 82A-212.

(3) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(4) "Member" means a person who has an individual account in the annuity savings fund; an active member is a person included under the provisions of 75-6209; an inactive member is a person included under the provisions of 75-6210.

(5) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(6) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 75-6209.

(7) "Prior service" means employment of the same nature as service defined in subsection (6) of this section, but rendered before September 1, 1937.

(8) "Creditable service" is that service defined by 75-6212.

(9) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 75-6206(2).

(10) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(11) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including irregular forms of remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid in kind. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year.

(12) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 75-6207(1)(a).

(13) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions. All annuities shall be paid in equal monthly installments. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

(14) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund. All pensions shall be paid in equal monthly installments.

(15) "Retirement allowance" means the annuity plus the pension.

(16) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(17) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(18) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(19) "Former retirement system" means the retirement system established under 1113 through 1132 of the Revised Codes of Montana, 1935.

(20) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(21) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

History: En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 127 and once by Ch. 331. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment substituted "section 82A-212" for "section 75-6203" in subdivision (2).

The 1975 amendment substituted "which contributions have" for "which the five

per cent (5%) contribution" in subdivision (12).

Chapter 127, Laws of 1977, substituted "paid out of the pension accumulation fund" at the end of the first sentence in subdivision (14) for "paid into the pension fund derived from money accumulated by employers"; and made minor changes in phraseology, punctuation and style.

Chapter 331, Laws of 1977, rewrote subdivision (11), as set out in the parent volume; rewrote subdivision (12) which read: "Average final compensation" means the average of the earnable compensation of any three (3) consecutive years on which contributions have been made by the member"; added subdivisions (20) and (21); and made a minor change in phraseology.

75-6202. Retirement system. The state teachers' retirement system created under the provisions of chapter 87, Laws of 1937 is hereby recognized as the state teachers' retirement system of the state of Montana and no provisions of this act shall affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of chapter 87, Laws of 1937 or any subsequent amendment thereto. Such state teachers' retirement system shall be known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have such powers and privileges of a corporation that may be necessary to carry into effect the provisions of this title.

History: En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974.

Amendments

The 1974 amendment deleted "invest its funds" before "hold its assets" near the end of this section.

75-6203. Repealed.

Repeal

Section 75-6203 (Sec. 98, Ch. 5, L. 1971; Sec. 30, Ch. 100, L. 1973), relating to the

teachers' retirement board, was repealed by Sec. 103, Ch. 326, Laws of 1974. For new law, see sec. 82A-212.

75-6204. Per diem and expenses. The members of the retirement board shall serve without direct or indirect compensation except that each appointed member shall receive twenty-five dollars (\$25) per day and travel expenses, as provided for in sections 59-538, 59-539, and 59-801, for each day in attendance at the meetings of such board or in the execution of his duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section shall be paid from the expense fund of the retirement system.

History: En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975.

second sentence limiting each member's per diem to \$300 per fiscal year.

The 1975 amendment substituted "and travel expenses, as provided for in sections 59-538, 59-539 and 59-801" for "and his necessary and actual expenses incurred" in the first sentence.

Amendments

The 1973 amendment increased the per diem rate specified in the first sentence from \$20.00 to \$25.00; and deleted a

75-6205. Powers and duties of retirement board. The retirement board shall administer and operate the retirement system within the limitations prescribed by this title and, to this end, it is the duty of the retirement board to:

- (1) establish rules necessary for the proper administration and operation of the retirement system;
- (2) elect a chairman from its membership;
- (3) appoint a secretary who may be one of its members;
- (4) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system;
- (5) approve or disapprove all expenditures necessary for the proper operation of the retirement system;
- (6) keep a record of all its proceedings, which must be open to public inspection;
- (7) publish a biennial report by January 1 of each year the legislature meets, which reports in detail the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system, and submit the biennial report to the governor and furnish copies to the legislature;
- (8) when the retirement board considers it necessary, designate a medical board to be composed of three physicians who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system;
- (9) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;
- (10) designate an actuary to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making

an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;

(11) prepare an annual valuation of the assets and liabilities of the retirement system;

(12) determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 75-6209;

(13) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(14) adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(a) 1 year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than 1 year's creditable service shall be awarded for service during the same school fiscal year;

(b) not more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay;

(15) grant retirement, disability, and other benefits under the provisions of 75-6208;

(16) annually determine the rate of regular interest as prescribed in 75-6206;

(17) establish and maintain the funds of the retirement system in accordance with the provisions of 75-6207; and

(18) perform such other duties and functions as are required to properly administer and operate the retirement system.

History: En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977.

Amendments

Chapter 127, Laws of 1977, deleted the first sentence in subdivision (14)(b); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

Chapter 331, Laws of 1977, deleted former subdivision (14)(b); and redesignated former subdivision (14)(c) as subdivision (14)(b). For prior version, see parent volume.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 127 and once by Ch. 331. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

75-6206. Financial administration of moneys. The members of the retirement board are the trustees of all moneys collected for the retirement system, and, as such trustees, they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and reinvested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several funds of the retirement system an amount equal to the average balance of the funds during the preceding fiscal year multiplied by the rate of

regular interest. In accordance with the provisions of 75-6207(4)(e), the amount to be credited to each fund shall be allocated from the interest and other earnings on the moneys of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense fund under the provisions of 75-6207(5).

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which the moneys are invested. All expenditures from the moneys may be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as its authority for approving such claims.

(5) Except as herein provided, no member of the retirement board or any of its employees may have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system. No member of the retirement board or any of its employees may, directly or indirectly, for himself or as an agent, in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board. No member of the retirement board or any of its employees may become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

(6) The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of 7 years. No right of the member may be jeopardized by such transfer, and the amount shall be transferred back to the member's annuity savings account upon his request.

(7) All the funds established by 75-6207, except the expense fund, shall be accounts in the agency fund of the treasury fund structure of the state. The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure.

(8) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(9) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

History: En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 127 and once by Ch. 331. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment substituted "board of investments" for "board of land commissioners" at the end of subdivision (1); and deleted "on the basis of the interest earnings of the retirement system for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future" from the end of subdivision (2).

The 1974 amendment substituted "department of administration" in subdivision (4) for "state controller."

Chapter 127, Laws of 1977, changed statute references in this section to reflect amendments of those sections; and made minor changes in phraseology, punctuation and style.

Chapter 331, Laws of 1977, added subdivisions (8) and (9).

75-6207. Method of financing. (1) The retirement board shall establish and maintain the funds described in subsections (2) through (5), in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(2) Annuity savings fund—the annuity savings fund is a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(a) Each employer shall deduct from the compensation of each active member on the payroll for each payroll period on and subsequent to the date on which the member became a member an amount equal to 6.187% of the member's earned compensation.

(b) The deduction shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims whatsoever for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(c) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to any accumulated contributions which he has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(d) The accumulated contributions of a member, withdrawn by him or paid to his estate or to his designated beneficiary in event of his death, shall be paid from the annuity savings fund. Upon the retirement of a member, his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(3) Annuity reserve fund—the annuity reserve fund is the fund in which the reserves on all annuities in force shall be held and from which shall be paid all annuities and all benefits in lieu of annuities shall be paid. If a beneficiary retired on account of disability is restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(4) Pension accumulation fund—the pension accumulation fund is the fund in which the reserves for payment of pensions shall be accumulated and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each employer shall pay into the pension accumulation fund an amount equal to 6.312% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(b) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 75-7204.

(c) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(d) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the amounts required to allow regular interest on the annuity savings fund and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may, in its discretion, transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also an amount to cover expenses of administration.

(5) Expense fund—the expense fund is the fund to which all moneys for the administrative expenses of the retirement system shall be credited and from which the expenses of administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund out of the pension accumulation fund from interest and other earnings realized on the moneys of the retirement system.

History: En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977.

in 1977 by Chs. 127, 331, and 443. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by all amendments.

Amendments

The 1973 amendment increased the contribution rate specified in subdivision (1) (a) from 5% to 5½%; increased the

Compiler's Notes

This section was amended three times

contribution rate specified in subdivision (3)(a) from $5\frac{1}{8}\%$ to $5\frac{1}{4}\%$; deleted references to the pension reserve fund following references to the annuity reserve fund in subdivisions (3)(e) and (3)(g); deleted "with the exception of those payable to members not entitled to prior service credit" after the reference to section 75-6218 in subdivision (3)(f); deleted subdivision (3)(h), providing for transfer on retirement of a member without a prior service certificate; deleted a subsection (4), relating to a pension reserve fund, for text of which see parent volume; renumbered subsection (5) as (4); deleted a subdivision (5)(a) requiring an annual payment of \$1.00 per member for the expense fund; and made minor changes in style and phraseology.

The 1975 amendment increased the contribution rate specified in subdivision (1)(a) from $5\frac{1}{8}\%$ to $6\frac{1}{8}\%$; reduced the years of creditable service from 35 to 30 years in subdivision (1)(a); deleted former subdivision (1)(b), pertaining to determination of the amount earnable by an active member; redesignated former subdivisions (1)(c) and (1)(d) as subdivisions (1)(b) and (1)(c); deleted a provision in subdivision (1)(c) for deposits of amounts for the purchase of an additional annuity by a member; increased the contribution rates specified in subdivision (3)(a) from $5\frac{1}{4}\%$ to $6\frac{1}{4}\%$; and made minor changes in phraseology.

Chapter 127, Laws of 1977, designated the first paragraph as subsection (1); redesignated former subdivisions (1) through (4) as subsections (2) through (5); substituted "an amount to cover expenses of administration" at the end of subdivision (4)(g) for "such expenses as hereinafter provided"; and made minor changes in phraseology, punctuation and style.

Chapter 331, Laws of 1977, substituted "earned compensation" in subdivisions (2)(a) and (4)(a) for "earnable compensation"; deleted "but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty (60) and rendered thirty (30) years of creditable service if such member elects not to contribute" at the end of subdivision (2)(a); deleted "and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount shall be transferred to the pension accumulation fund" after "annuity savings fund" in subdivision (2)(c); inserted "out of the pension accumulation fund" near the end of subdivision (5); and made minor changes in phraseology.

Chapter 443, Laws of 1977, increased the deduction from employees' compensation from $6\frac{1}{8}\%$ to 6.187% in subdivision (2)(a); and increased employers' contribution from $6\frac{1}{4}\%$ to 6.312% of the earnable compensation of each member in subdivision (4)(a).

75-6207.1. Funding for increase in prior retirement allowances. The funds to pay for the increases in retirement allowances prescribed in 75-6208(2)(c)(ii) shall be provided as follows:

(1) one-half from an increase, sufficient for the purpose, in the payroll deduction provided for in 75-6207(1)(a); and

(2) one-half from an increase, sufficient for the purpose, in the employer's contribution provided for in 75-6207(3)(a).

History: En. 75-6207.1 by Sec. 2, Ch. 443, L. 1977.

Title of Act

An act to provide for an increase in retirement allowances received under the

teachers' retirement system by beneficiaries who were receiving such allowances prior to July 1, 1971; providing funding for the increase; amending section 75-6207 and 75-6208, R. C. M. 1947.

75-6208. Benefits. (1) The retirement, disability, and other benefits of the retirement system shall be granted on the basis of the provisions of subsections (2) through (8).

(2) Superannuation retirement:

(a) A member who has at least 5 full years of creditable service, whose last 5 years of creditable service were in this state and who has attained the age of 60 or has been credited with full-time or part-time service in 30 or more years may retire from service if he files with the retirement board his written application setting forth the fact of his retirement.

(b) (i) Any member in service who has attained the age of 70 years during any school year shall be retired on September 1 following his 70th birthday. This provision does not apply to teachers in the Montana university system, who may be employed beyond the age of 70 upon the recommendation of the president of the employing unit to the board of regents.

(ii) Members over 70 years of age may not:

(A) be allowed creditable service for services rendered after the end of the school year in which the age of 70 was attained;

(B) contribute to the retirement system after the end of such school year; and

(C) have the compensation received after the end of such school year used in computing average final salary.

(c) Initial employment of teachers in the Montana university system beyond the age of 70 may be made upon the recommendation of the president of the employing unit and the approval of the board of regents, but such employees shall be denied membership in the retirement system.

(d) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, the greater of an amount not to exceed one-fourth of his average final compensation and one-fourth of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) Allowance for superannuation retirement:

(a) Upon superannuation retirement a member shall receive a retirement allowance consisting of a pension which, together with an annuity, provides a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of creditable service.

(b) The minimum annual retirement allowance for a member who has 30 or more years of creditable service is \$2,400, and the minimum retirement allowance for a member whose creditable service is less than 30 years is based on an amount which bears the same ratio to \$2,400 as his service bears to 30 years.

(c) On July 1, 1977, every beneficiary receiving a retirement allowance who was receiving such allowance prior to July 1, 1971, will be entitled to an increase in his monthly retirement allowance of \$1 per month for each year of creditable service plus \$2 per month for each year he was retired prior to July 1, 1971. In the case of beneficiaries who are receiving an early retirement allowance, the latter figure of \$2 per month shall be multiplied by a fraction, the numerator of which is the number of years of his creditable service and the denominator of which is 30.

(d) A member who has at least 5 years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 55 may retire from service and be eligible for an early retirement allowance, if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections (3)(a) and (3)(b), with the exception that the allowance will be reduced by $\frac{1}{2}$ of 1% multiplied by the number of months by which the retirement date precedes the date

on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service.

(e) In the event of the death of a member after retirement, a death benefit of \$500 is payable to his designated beneficiary.

(f) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(4) Disability retirement:

(a) Upon the application of an active member or of his employer for a disability retirement allowance, any active member who has 5 or more years of creditable service may be retired by the retirement board the month immediately following the month in which his disability caused his retirement. In order for a member to be eligible for disability retirement, the retirement board must certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent, and that he should be retired.

(b) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require, and upon the beneficiary's application, shall permit a disability beneficiary who has not yet attained the age of 60 to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon. Should a disability beneficiary who has not yet attained the age of 60 refuse to submit to at least one medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and, should his refusal continue for 1 year, all his rights in and to his disability pension may be revoked by the retirement board.

(c) If the medical board reports and certifies to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and if the retirement board concurs in such report, his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, is equal to his average final compensation. If his earning capacity is changed later, his pension may be further modified, but the new pension may not exceed the pension originally granted or an amount which, when added to the amount earnable by the beneficiary, together with his annuity equals his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired may not become a member of the retirement system while receiving a reduced benefit.

(d) If a disability beneficiary under age 60 is restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be

restored to full force, and, upon his subsequent retirement, he shall be credited with such prior service and all his subsequent service as a member. If he is restored to active service on or after the attainment of the age of 55 years, his pension upon subsequent retirement may not exceed the pension that he would have received had he remained in service during the period of his previous retirement or the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

(5) Allowance for disability retirement:

(a) Upon retirement for disability, a member shall receive the superannuation allowance and other benefits prescribed under subsection (3), if he is eligible.

(b) If he is not eligible for the benefits prescribed under subsection (3), he shall receive a disability retirement allowance which consists of:

(i) an annuity which is the actuarial equivalent of his accumulated contributions at the time of retirement; and

(ii) a pension which, together with his annuity, provides a total retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-fourth of his average final compensation; otherwise, a pension which, together with his annuity, provides a total retirement allowance equal to one-fourth of his average final compensation.

(c) No allowance under subsection (5)(b) may exceed one-sixtieth of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

(d) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(6) Withdrawal of accumulated contributions—any inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions from his annuity account in the retirement system in accordance with the following provisions:

(a) An inactive member under the provisions of subsection (1) or (3) of 75-6210 may elect, without right of revocation, to withdraw his accumulated contributions. If he does not withdraw his accumulated contributions, he remains an inactive member of the retirement system with the right to qualify for its benefits.

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of 75-6210(2) may withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of 75-6211(4) may withdraw his accumulated contributions.

(7) Allowances for death of member:

(a) If a member dies before retirement, his accumulated contributions shall be paid to his estate or such person as he may have nominated by a

written designation filed with the retirement board prior to his death in the manner prescribed by the board.

(b) (i) In lieu of benefits provided for in subsection (7)(a), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in subsections (3)(a), (b), and (d) in the same manner as if the member elected option A provided for in subsection (8)(b)(i).

(ii) In the event payments made to an annuitant do not equal the amount of the members' accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(c) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a lump-sum death benefit of \$500 is payable to his designated beneficiary.

(d) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death or was retired at the time of his death, the sum of \$100 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

(8) Optional allowances:

(a) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (8)(b) in lieu of the normal form of retirement allowance, which is provided for in subsections (3) and (5). If a beneficiary dies within 30 days after retirement, his election to receive an optional allowance is void and his death will be considered as that of an active member.

(b) An optional allowance is the actuarial equivalent of the member's retirement or disability allowance at the time of his retirement and provides an allowance payable to him throughout his lifetime and, upon his death, an allowance payable to the person that he nominated by written designation, a duly acknowledged and filed with the retirement board at the time of his retirement, in accordance with one of the following options:

(i) Option A—the optional allowance will be paid to the member throughout his lifetime and, upon his death, continue throughout the lifetime of his designated beneficiary;

(ii) Option B—the optional allowance will be paid to the member throughout his lifetime and, upon his death, one-half of the optional allowance will be continued throughout the lifetime of his designated beneficiary;

(iii) Option C—the optional allowance will be paid to the member throughout his lifetime and, upon his death, two-thirds of the optional allowance will be continued throughout the lifetime of his designated beneficiary;

(iv) Option D—the optional allowance will be paid to the member while both the member and his designated beneficiary are living and, upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor;

(v) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living and, upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor; or

(vi) Option F—some other benefit will be paid either to the member or his surviving designated beneficiary in accordance with provisions approved by the retirement board.

(9) There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.

History: En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977.

Compiler's Notes

This section was amended three times in 1977 by Chs. 127, 331 and 443. The code commissioner has made a composite section embodying the changes made by some, but not all, amendments.

Amendments

The 1973 amendment inserted "or who has completed thirty-five (35) years of creditable service" in subdivision (1)(a); completely rewrote the lettered subdivisions in subsection (2); deleted "ninety per cent (90%) of" before "one-seventieth" in two places in subdivision (4)(b); substituted "may withdraw" for "shall withdraw" in the preliminary paragraph of subsection (5) and in subdivisions (5)(b) and (5)(c); deleted a paragraph following subdivision (5)(c); completely rewrote the second sentence and added the third sentence of subdivision (6)(b); and completely rewrote that portion of subsection (7) following the first sentence. For prior provisions, see parent volume.

The 1975 amendment reduced the years of service requirement from 35 to 30 years in subdivisions (1)(a), (2)(a), (2)(b) and (2)(d); inserted "part-time or substitute" before "teacher" in subdivision (1)(c); substituted "one-sixtieth (1/60)" before "of his average final compensation" in subdivision (2)(a) and in two places in subdivision (4)(b); deleted former subdivisions (2)(c) and (2)(d), pertaining to increases in monthly retirement allowances beginning on July 1, 1973; redesignated former subdivisions (2)(e) to (2)(h) as subdivisions (2)(c) to (2)(f); substituted "July 1, 1975, and July 1, 1976" for "July 1, 1974 and on July 1, 1975" at the beginning of subdivision (2)(c); substituted "the month immediately following the month in which his disability

caused his retirement" for "not less than thirty (30) and not more than ninety (90) days after the date of" before "filing an application" in the first sentence of subdivision (3)(a); substituted "board" for "medical board" in the second sentence of subdivision (3)(a); deleted former subdivision (3)(b), pertaining to granting of disability retirement to an applicant prevented from making application because of disability; redesignated former subdivisions (3)(c) to (3)(e) as subdivisions (3)(b) to (3)(d); increased the monthly payment to a minor child from \$50 to \$100 in subdivision (6)(c); and made minor changes in style and phraseology.

Chapter 127, Laws of 1977, designated the first paragraph as subsection (1); and redesignated the following subsections accordingly; added "if his creditable service is less than 30 years" at the end of subdivision (3)(a)(ii); deleted "Re-examination of beneficiaries retired on account of disability" at the beginning of subdivision (4)(b); inserted "If he is not eligible for the benefits prescribed under subsection (3)" at the beginning of subdivision (5)(b); inserted subdivision (7)(b)(ii); substituted subdivision (8)(a) for two sentences reading "With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due; any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided. This benefit shall be referred to as the normal form of retirement allowance"; rewrote subdivision (8)(b) which read: "In lieu of normal form of retirement allowance, the member may elect an optional allowance which would be the actuarial equivalent at the time of his retirement or disability allowance and would provide an allowance payable throughout his lifetime and upon his death continue to such person as he shall nominate by written designation duly acknowledged and filed with

the retirement board at the time of his retirement with the provision that"; and made minor changes in phraseology, punctuation and style.

Chapter 331, Laws of 1977, substituted "has been credited with full-time or part-time service in 30 or more years" in the subdivision designated (2)(a) for "who has completed thirty (30) years"; substituted "without loss of retirement benefits * * * retirement board" at the end of the subdivision designated (2)(d) for "an amount not to exceed one-fourth (1/4) of his average final compensation without loss of retirement benefits"; substituted "one-sixtieth" in the subdivision designated (3)(a) for "one-half (1/2) of his average

final compensation provided his creditable service is at least thirty (30) years, otherwise a pension together with his annuity of one-sixtieth (1/60)"; inserted "creditable" in two places in the subdivision designated as subdivision (3)(b); deleted a subdivision relating to increase in retirement allowance on July 1, 1975, and July 1, 1976"; inserted "or was retired at the time of his death" in the middle of the subdivision designated (7)(d); added a subsection now designated (9); and made minor changes in phraseology and style.

Chapter 443, Laws of 1977, inserted a subdivision now designated subdivision (3)(c).

75-6209. Active membership. (1) Unless otherwise provided by this title, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 75-6101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system, except as provided in 75-6208(2)(c);

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (b), or (c);

(e) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (b), or (c); time of such election, and who may thereafter elect to become a member of the retirement system:

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike.

History: En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 127 and once by Ch.

331. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 127, Laws of 1977, added "are not required to be members" at the end of the introductory paragraph of subsection (1); added "except as provided in 75-6208(2)(c)" at the end of subdivision (1)(b); inserted "school" before "district" at the end of subdivision (1)(c); substituted "In order to be eligible for active membership, any person described in subsection (1) must" at the beginning of subsection (2) for "Any person who is designated a member by this section shall"; and made minor changes in phrase-

ology, punctuation and style. For prior version, see parent volume.

Chapter 331, Laws of 1977, deleted "full time, outside of vacation periods" after "be employed" at the beginning of subdivision (2)(a); deleted a provision authorizing the retirement board to allow a part-time employee to become a member of the retirement system; added "for at least 30 days in any fiscal year" in subdivision (2)(a); deleted provisions relating to the retirement board's authority to allow a person not complying with the requirements of subdivision (2)(b) to become a member of the retirement system; and added the sentence relating to persons in similar circumstances. For prior version, see parent volume.

75-6211. Membership termination. The active or inactive membership in the retirement system of any person terminates when:

- (1) he retires on a retirement allowance of the retirement system;
- (2) he dies;
- (3) he withdraws his accumulated contributions to the retirement system under the provisions of 75-6208(6); or
- (4) he ceases to be employed in a capacity that allows his membership, he has less than 5 years of creditable service in the retirement system, and he cannot qualify under the provisions of 75-6210(2).

History: En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977.

Amendments

The 1977 amendment substituted "75-6208 (6)" for "subsection (5) of section 75-6208" in subdivision (3); and made minor changes in phraseology and style.

75-6212. Membership application and creditable service. (1) Whenever a person becomes a member of the retirement system as required by 75-6209, he shall complete an application form prescribed by the retirement board.

(2) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 75-6209 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(3) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this act, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 75-6213;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 75-6213;

(d) any service awarded for employment while on leave under 75-6213; and

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 75-6213.

(4) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

History: En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 127 and once by Ch. 331. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment designated the former final paragraph as paragraph (4); and added paragraph (5).

Chapter 127, Laws of 1977, inserted subsection designations (1) to (3); redesignated former subdivisions (1) through (5) as (3)(a), (3)(c), (3)(b), (4) and (3)(d), respectively; inserted subdivision (3)(e); and made minor changes in phraseology and style.

Chapter 331, Laws of 1977, substituted "a member of the retirement system as required by 75-6209" in the first sentence for "eligible for membership in the retirement system"; substituted "date of his employment in a capacity prescribed for his eligibility in 75-6209" in subsection (2) for "receipt of the membership application by the retirement board"; and made minor changes in phraseology.

75-6213. Creditable service for out-of-state employment, employment while on leave, service in the military, red cross, or merchant marine, and prior service. (1) A person applying for membership may also apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this title if such service had been performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

(2) A person applying for membership may also apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon his completing 5 years of active membership in Montana subsequent to his return, if his employment while on leave enhanced his teaching experience as determined by the board. The

person shall be awarded creditable service as determined by the board in an amount not exceeding 2 years, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

(3) A person applying for membership may also apply for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

(4) The total creditable service for out-of-state teaching, employment while on leave, and active service in the armed forces of the United States or the American red cross or merchant marine may not exceed 5 years.

(5) A member who is retiring with at least 5 years of creditable service and who has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service he rendered prior to September 1, 1937, for which he has not received a prior service certificate. In order to receive the creditable service, he must apply for it and provide certification of the prior service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate.

History: En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977.

Amendments

The 1973 amendment substituted "his first full year's teaching salary earned in Montana after his out-of-state service" in the latter part of the second sentence of the first paragraph for "his first year's salary earned in Montana"; inserted numbered paragraphs (1) to (3); and re-

duced the creditable service requirement stated at the beginning of the final paragraph from ten to five years.

The 1975 amendment substituted "the employee contribution for" for "five per cent (5%)" in the second sentence of the first paragraph; inserted the sentence: "The contribution rate shall be that rate in effect at the time he is eligible for service" in the first paragraph and in numbered paragraphs (1) and (2); substituted "the combined employer and employee contributions for" for "ten and three-eighths per cent (10⅜%)" in the

third sentence of numbered paragraph (1) and in the second sentence of numbered paragraph (2); inserted "for each year of creditable service" after "merchant marine" in the second sentence of numbered paragraph (2).

The 1977 amendment designated the beginning paragraph as subsection (1); redesignated former subdivisions (1) to (3) as subsections (2) to (4); designated the former ending paragraph as subsection (5); and made minor changes in phraseology, punctuation and style.

75-6214. Duties of employer. Each employer shall:

(1) deduct the contribution of each member employed by him at the rate prescribed by 75-6207(2) from each salary payment for each payroll period and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by 75-6207(4), at the time that the employee contributions are transmitted to the secretary;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform him of his rights and obligations relating to the retirement system; a person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from his compensation;

(5) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system; and

(6) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the board.

History: En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 127 and once by Ch. 331. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 127, Laws of 1977, changed statute references in subdivisions (1) and (2) to reflect amendment of those sections; substituted "retirement system" for "retirement board" at the end of subdivision (5); and made minor changes in phraseology, punctuation and style.

Chapter 331, Laws of 1977, substituted "retirement system" for "retirement board" at the end of subdivision (5).

75-6216. Guarantee by state. Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund, and the maintenance of annuity reserves in the annuity reserve fund, as provided for in this title, and the payment of all annuities, pensions, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

History: En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977.

Compiler's Notes

This section was amended twice in

1977, once by Ch. 127 and once by Ch. 331. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 127, Laws of 1977, deleted "and of pension reserves in the pension reserve fund" after "annuity reserve fund" in the middle of the section; and made minor changes in phraseology, punctuation and style.

Chapter 331, Laws of 1977, deleted "and of pension reserves in the pension reserve

fund" after "annuity reserve fund" in the middle of the section.

Effective Date

Section 10 of Ch. 331, Laws 1977 provided the act should be effective on its passage and approval. Approved April 7, 1977.

75-6217. Penalty for fraud—correction of erroneous payments. (1) A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

(2) If a change or error in the records results in a member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then, on discovery of the error, the retirement board shall correct the error and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

History: En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977.

Amendments

The 1977 amendment inserted subsection

designations (1) and (2) at the beginning of the first and second sentences; inserted "system" near the beginning of subsection (2); and made minor changes in phraseology and punctuation.

75-6219. Establishment of a tax-deferred annuity program. The retirement board shall establish a tax-deferred annuity program for teachers which shall conform with the provisions of section 403 (b) of the Internal Revenue Code. Contributions by members participating in the tax-deferred annuity program shall be maintained in individual accounts established for this purpose.

History: En. 75-6219 by Sec. 7, Ch. 507, L. 1973.

Title of Act

An act to amend section 75-6204, R. C. M. 1947, to increase pay to members of the teachers' retirement board and remove restrictions on maximum per diem pay; amending sections 75-6206 and 75-6207, R. C. M. 1947, to change certain methods of funding and disbursing from the various teachers' retirement system funds; amending section 75-6208, R. C. M. 1947, to provide additions and changes in various

benefits to members of the teachers' retirement system; amending section 75-6212, R. C. M. 1947, to allow for service credits for employment while a teacher is on leave; amending section 75-6213, R. C. M. 1947, to define basis of cost for out-of-state service credit; changing credit for out-of-state teaching and prior military service and decreasing membership requirements of the teachers' retirement system; adding a new section to be numbered 75-6219 providing for a tax deferred annuity program sponsored by the teachers' retirement system.

CHAPTER 63—COMPULSORY ATTENDANCE AND TUITION AGREEMENTS**Section**

- 75-6303. Compulsory enrollment and excuses.
- 75-6304. Compulsory attendance and excuses.
- 75-6313. Elementary tuition with mandatory approval.
- 75-6316. High school tuition.
- 75-6317. Reporting, budgeting and payment for high school tuition.
- 75-6323. Extracurricular fund for pupil functions.

75-6303. Compulsory enrollment and excuses. Any parent, guardian or other person who is responsible for the care of any child who is seven (7) years of age or older prior to the first day of school in any school fiscal year and has not yet reached his sixteenth birthday and who has not completed the work of the eighth (8th) grade, shall cause the child to be instructed in the program prescribed by the board of public education pursuant to section 75-7503.1. Such parent, guardian or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless:

(1) the child is enrolled in a private institution which provides instruction in the program prescribed by the board of public education pursuant to section 75-7503.1;

(2) to (5) * * * [Same as parent volume.]

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975.

Amendments

The 1973 amendment substituted "and" for "or" after "sixteenth birthday" in the first sentence.

The 1975 amendment substituted "program prescribed by the board of public education pursuant to section 75-7503.1"

for "English language and in the subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable" at the end of the first sentence of the first paragraph; and substituted "program prescribed by the board of public education pursuant to section 75-7503.1" for "subjects prescribed by section 75-7503 or section 75-7504, whichever is applicable and in which the basic language taught is English" in subsection (1).

75-6304. Compulsory attendance and excuses. Any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year, has not yet reached his 16th birthday, and has not completed the work of the eighth grade shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district unless:

(1) the child has been excused under one of the conditions specified in 75-6303;

(2) the child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees; or

(3) the child has been suspended or expelled under the provisions of 75-6311.

History: En. 75-6304 by Sec. 117, Ch. 5, L. 1971; amd. Sec. 8, Ch. 266, L. 1977.

Amendments

The 1977 amendment substituted "and"

for "or of a child who" in the middle of the first sentence after "16th birthday"; and made minor changes in punctuation and style.

75-6310. Duties and sanctions.

Equal Protection

Enforcement of a local school district rule prohibiting married students from engaging in extracurricular high school activities, including varsity football, was

enjoined on the ground that the regulation constituted a denial of equal protection by discriminating against married persons without a rational basis. *Moran v. School Dist. No. 7*, 350 F Supp 1180.

75-6313. Elementary tuition with mandatory approval. (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located:

- (a) in any other district of the county of his residence;
- (b) in a county adjoining his county of residence; or
- (c) in a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

- (a) the trustees of the elementary district in which the child resides;
- (b) the trustees of the district where the child wishes to attend school; and
- (c) the county superintendent of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

(a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school; or

(e) the child has been declared by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 10-1301, or a delinquent youth, as defined in 10-1203, and has been ordered to be placed in a licensed child care institution which is approved by the department of social and rehabilitation services and as a result of the order the child is required to attend elementary school outside of the district of his residence. For purposes of this subsection the prescribed geographic relationship of the receiving district to the district of residence does not apply.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsections (3)(a), (3)(b), (3)(c), (3)(d), or (3)(e) above when they find that due to insufficient room and overcrowding the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application.

History: En. 75-6313 by Sec. 126, Ch. 5, L. 1971; amd. Sec. 9, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; changed subdivision designations from numbers to letters; substituted "court of competent jurisdiction" for "district court" in subdivision (3)(e); substituted "abused, neglected, or dependent child, as defined in 10-1301" in

subdivision (3)(e) for "a dependent and neglected child, as defined in section 10-501"; substituted "delinquent youth, as defined by 10-1203" for "juvenile delinquent child, as defined in section 10-602" in subdivision (3)(e); substituted "department of social and rehabilitation services" for "state department of public welfare" in subdivision (3)(e); and made minor changes in phraseology, punctuation and style.

75-6316. High school tuition. Any child may be enrolled in and attend a high school outside of the county in which he resides when such high school is located in any county of the state of Montana or in a county of another state that is adjacent to the state of Montana. When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before the first day of July of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. Such application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved by the trustees of the district where the child wishes to attend school and the county superintendent of the child's county of residence before permission to enroll in and attend a school outside of the county under the provisions of this section shall be granted.

The county superintendent shall approve a tuition application when a child lives closer to a high school of another county than any high school located within his resident county or, when due to road or geographic conditions, it is impractical to attend a high school in his resident county. In approving such a tuition application the county superintendent is not required to approve a tuition application for a student seeking to attend a high school outside the state of Montana if the resident district provides transportation. In approving a tuition agreement under this provision, the county superintendent may require the child to attend the high school closest to his residence. The county superintendent may approve any other tuition application that satisfies the geographic requirements of this section.

The trustees of the district where the child wishes to attend school shall approve or disapprove any tuition application submitted to them under the provisions of this section within fifteen (15) days after the receipt of the application.

The county superintendent shall notify the parent or guardian, and the trustees of the district where the child wishes to attend school of

the tuition agreement approval or disapproval. If a tuition agreement is disapproved by the county superintendent, the parent may appeal such disapproval to the county superintendent for his reconsideration and, subsequently, to the superintendent of public instruction under the provision for the appeal of controversies in this title. The approval of any tuition agreement by the approval agents or upon appeal shall authorize the child named in such agreement to enroll in and attend the school named in such agreement for the ensuing school fiscal year.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974.

Effective Date

Section 2 of Ch. 211, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

Amendments

The 1974 amendment inserted the second sentence in the second paragraph.

75-6317. Reporting, budgeting and payment for high school tuition. At the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

- (1) totaling the actual expenditures from the district general fund, retirement fund and debt service fund;
- (2) dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of section 75-6902; and
- (3) subtracting the total of the per ANB amount allowed by section 75-6905 that represents the foundation program as prescribed by section 75-6906 plus the per ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above.

Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

- (a) the names, addresses, and resident counties of the pupils attending the schools of the district under an approved tuition agreement;
- (b) the number of days of school attended by each pupil;
- (c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, shall have the authority to waive; and
- (d) the rate of current school fiscal year tuition, as determined under the provisions of this section. When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside.

When the county superintendent of any county receives a tuition report or reports for high school pupils residing in his county and attending an out-of-county high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-county high schools on the basis of the following per pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement and other information provided by each high school district where resident county pupils have attended school.

The total amount of the high school tuition with consideration of any tuition waivers, shall be financed by the county basic special tax for high schools as provided in section 75-6914.

In December, the county superintendent shall cause the payment by county warrant of the high school tuition obligations established under this section out of the first moneys realized from the county basic special tax for high schools. The payment shall be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit such tuition receipts to the general fund of the applicable high school district, and the tuition receipts shall be used in accordance with the provisions of section 75-6926.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974.

Amendments

The 1974 amendment rewrote this sec-

tion to repeal the high school tuition schedule and to establish the annual calculation of the district's tuition rate on the basis of actual expenditures.

75-6323. Extracurricular fund for pupil functions. The government of the pupils of the school within a district or the administration of a school on behalf of the pupils may establish an extracurricular fund for the purposes of the receipts and expenditures of money collected for pupil extracurricular functions with the approval of the trustees of the district. All extracurricular moneys of any pupil organization of the school shall be deposited and expended by check from a bank account maintained for the extracurricular fund.

An accounting system for the extracurricular fund recommended by the department of community affairs shall be implemented by the trustees. Such accounting system shall provide for:

(1) the internal control of the cash receipts and expenditures of the money; and

(2) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

History: En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973; amd. Sec. 17, Ch. 380, L. 1975.

Amendments

The 1973 amendment rewrote the former third paragraph to delete references to retention of a "qualified accountant" to perform the annual audit.

The 1975 amendment substituted "department of community affairs" for "state examiner" in the second paragraph and

deleted the third and fourth paragraphs pertaining to an annual audit of the extracurricular fund.

Repealing Clause

Section 18 of Ch. 380, Laws 1975 read "Sections 82-4501 through 82-4514, R. C. M. 1947, are repealed."

Effective Date

Section 19 of Ch. 380, Laws 1975 read "This act shall become effective on July 1, 1976."

CHAPTER 64—SCHOOL ELECTIONS

Section

75-6404. Regular school election day and special school elections.

75-6410. Qualifications of elector.

75-6412. Elector challenges.

75-6404. Regular school election day and special school elections. The first Tuesday of April of each year shall be the regular school election day. Unless otherwise provided by law, special school elections may be conducted at such times as determined by the trustees.

History: En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974.

first Tuesday of April" for "The first Saturday of April."

Amendments

The 1974 amendment substituted "The

Effective Date

Section 3 of Ch. 109, Laws 1974 read "This act shall become effective on January 1, 1975."

75-6406. Conditions under which school election called.

Cross-References

Board of public education to exercise

powers and duties of board of education, sec. 75-5617 (1).

75-6410. Qualifications of elector. (1) Except as provided in subsections (2) and (3), each person is entitled to vote at school elections if he has all of the following qualifications:

(a) He has registered to vote with the county registrar as a resident in the school district in which he resides and proposes to vote in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in 75-6413.

(b) He is 18 years of age or older.

(c) He has been a resident of Montana for at least 30 days.

(d) He is a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be mentally incompetent has the right to vote unless he has been restored to capacity as provided by law.

History: En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973; amd. Sec. 10, Ch. 266, L. 1977.

Amendments

Chapter 91, Laws of 1973, deleted "Except as provided in section 75-6411" from the beginning of the section; and inserted "as a resident in the school district in which he resides and proposes to vote" in subdivision (1).

Chapter 100, Laws of 1973, substituted new subdivisions (2) and (3) for subdivisions reading "(2) He shall be of a minimum age for voting provided by the constitution of the state of Montana;

(3) He has met the residency requirement for voting as provided by the constitution of the state of Montana"; substituted "while he is serving a sentence in a penal institution" at the end of the next to last paragraph for "unless he has been pardoned"; and substituted "to be of unsound mind" in the final paragraph for "insane."

The 1977 amendment inserted the subsection designations; inserted the exception at the beginning of subsection (1); redesignated former subdivisions (1) through (4) as subdivisions (1)(a) through (1)(d); substituted "mentally incompetent" for "of unsound mind" in subsection (3); and made minor changes in phraseology, punctuation and style.

75-6410.1. Repealed.

Repeal

Section 75-6410.1 (Sec. 1, Ch. 83, L. 1971), relating to qualifications of voters on school tax questions, was repealed by

Sec. 58, Ch. 100, Laws 1973. Chapter 391, Laws of 1973, purported to amend this section, but such amendment was void under the rule in section 43-515.

75-6412. Elector challenges. (1) An elector may challenge the qualifications of another elector under the provisions of 23-3015. Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 23-3611. The challenge shall be determined in the same manner, using the same oath as provided in chapter 36 of Title 23.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 94-7-203.

History: En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973; amd. Sec. 11, Ch. 266, L. 1977.

The 1977 amendment inserted the subsection designations; substituted "false swearing" for "perjury" near the end of subsection (2); substituted "is punishable as provided in 94-7-203" for "shall be punished accordingly" at the end of subsection (2); and made minor changes in phraseology and style.

Amendments

The 1973 amendment inserted a new first sentence at the beginning of the section.

CHAPTER 65—SCHOOL DISTRICT ORGANIZATION AND REORGANIZATION

Section

- 75-6503. District classification.
- 75-6505. Time limitation for district boundary changes.
- 75-6508. Elementary district annexation.
- 75-6509. Consolidation or annexation election with assumption of bonded indebtedness.
- 75-6513. Joint elementary district abandonment.
- 75-6516. Transfer of territory from one elementary district to another.
- 75-6516.1. Boundary adjustments in elementary school districts.
- 75-6516.2. Review of boundaries by county superintendent.
- 75-6517. Limitations for creation of new elementary district.
- 75-6523. Counterproposed high school district boundaries by electors and election.
- 75-6525. Limitations for organization of joint high school district.
- 75-6532. Cash disposition when district ceases to exist.
- 75-6534. Cash disposition when new elementary district created.

75-6503. District classification. Each elementary district shall have a classification of:

(1) and (2). * * * [Same as parent volume.]

(3) third class, if it has a population of less than one thousand (1,000). The population of an elementary district shall be determined by the county superintendent on the basis of the best available population information for the district.

The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare such district's classification to be changed in accordance with the determined population, except that the classification of an elementary district shall not be changed more than once every five (5) years.

Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee posi-

tions shall be filled in the manner provided for filling trustee vacancies. Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.

The classification of a high school district shall be the same as the classification of the elementary district where the high school building is located. Whenever the classification of such elementary district is changed, the classification of a high school district shall be changed accordingly, and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in section 75-5905 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions shall be filled by the appointment of the county superintendent and such positions shall be subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances shall not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted "or; if the county superintendent deems it more equitable, he shall multiply by three (3)

the approved number of school census children from the last completed census report of the district who are six (6) years of age or older but who have not reached their twenty-first (21) birthday" from the end of the sentence following clause (3).

75-6505. Time limitation for district boundary changes. No elementary district shall be created nor shall any elementary district boundaries be changed between the first day of January and the second Monday of August of any calendar year except when:

(1) to (3) * * * [Same as parent volume.]

History: En. 75-6505 by Sec. 164, Ch. 5, L. 1971; amd. Sec. 25, Ch. 388, L. 1975.

Amendments

The 1975 amendment substituted "January" for "March" in the first paragraph.

75-6508. Elementary district annexation. An elementary district may be annexed to another elementary district located in the same county when one of the conditions of section 75-6507 is met in accordance with the following procedure:

(1) to (6). * * * [Same as parent volume.]

History: En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973.

of the conditions of section 75-6507 is met" in the latter part of the preliminary clause.

Amendments

The 1973 amendment inserted "when one

75-6509. Consolidation or annexation election with assumption of bonded indebtedness. (1) to (3) * * * [Same as parent volume.]

(4) When the trustees in each elementary district conducting an election canvass the vote under the provisions of section 75-6423, they shall decide according to the following procedure, if the proposition has been approved:

(a) * * * [Same as parent volume.]

(b) When the proposition is approved under subsection (4)(a), determine the number of votes "FOR" and "AGAINST" the proposition. The proposition shall be approved in the district if a majority of those voting approve the proposition. If the proposition is disapproved under either the provisions of subsection (4)(a) or (4)(b), the proposition shall be disapproved in the district.

History: En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974.

section (4)(a)" and "subsection (4)(a) or (4)(b)" for "subsection (3)(a)" and "subsection (3)(a) or (3)(b)" in subdivision (4)(b).

Amendments

The 1974 amendment substituted "sub-

75-6513. Joint elementary district abandonment. Any joint elementary district shall be abandoned for the reasons prescribed in 75-6512 or when the taxable value of the taxable property of the portion of the joint district that is located within any one of the counties is of so little value that the continued inclusion of such portion in the joint district is not justified. The boards of trustees designated by 75-6720 for school budgeting purposes shall be responsible for ordering the abandonment of the joint district and shall immediately send a copy of such order to the county superintendent of each county with territory in the joint district.

After the issuance or receipt of the abandonment order, each county superintendent shall attach the territory within his county to a contiguous elementary district within his county; except when the district is abandoned because of the lack of taxable property in one county's territory of the district and a school is operated in another county's territory of the district which territory has a taxable value of seventy-five thousand dollars (\$75,000) or more, the county superintendent of the county where such territory is located shall not attach it to another district. Such territory shall continue to operate as an elementary district within the county.

Any abandonment of a joint elementary district shall become effective on the date of the abandonment order except that district abandonments under the provisions of subsection (1) of 75-6512 shall become effective on the first day of July.

History: En. 75-6513 by Sec. 172, Ch. 5, L. 1971; amd. Sec. 4, Ch. 277, L. 1977.

boards of trustees" for "The county superintendent" at the beginning of the second sentence of the first paragraph; and made minor changes in style.

Amendments

The 1977 amendment substituted "The

75-6516. Transfer of territory from one elementary district to another. A majority of the electors of any elementary district, who are qualified to vote under the provisions of section 75-6410 and who reside in territory which is a part of an elementary district, may petition the county superintendent to transfer such territory to another elementary district when:

(1) such territory is contiguous to the district to which it is to be attached;

(2) such territory is not located within three miles, over the shortest practical route, of an operating school of the district from which it is to be detached; and

(3) the transfer of such territory will not reduce the taxable value of the district to less than one hundred thousand dollars (\$100,000) unless the remaining territory of the district will contain not less than fifty thousand (50,000) acres of nontaxable Indian land.

The petition shall be addressed to the county superintendent and shall describe the territory that is requested to be transferred and to what district it is to be transferred, state the reasons why such transfer is requested and state the number of elementary school-age children residing in such territory.

On receipt of a valid petition for a territory transfer, the county superintendent shall file such petition, set a hearing place, date, and time for consideration of the petition that is not more than forty (40) days after receipt of the petition and give notice of the place, date, and time of the hearing. The notices shall be posted in the districts affected by the request in the manner prescribed in this title for school elections, with at least one such notice posted in the territory to be transferred.

The county superintendent shall conduct the hearing as scheduled, and any resident or taxpayer of the affected districts shall be heard. If the county superintendent shall deem it advisable and in the best interests of the residents of such territory, he shall grant the petitioned request and order the change of district boundaries to coincide with the boundary description in the petition. Otherwise, he shall, by order, deny the request. Either of the orders shall be final thirty (30) days after its date unless it is appealed to the board of county commissioners by a resident or taxpayer of either district affected by the territory transfer. The decision of the board of county commissioners, after a hearing on such matter and consideration of the material presented at the county superintendent's hearing, shall be final thirty (30) days after its date unless a petition to submit the question to a vote of the people in the district from which the land is to be transferred, which has been signed by a majority of the electors of the district who reside in the territory to be transferred and who are qualified to vote in elections for that district under section 75-6410, R. C. M. 1947, is presented prior to that time. When a petition is submitted under this subsection, the question of whether the land shall be transferred to another district shall be put before the voters at the next regular school election in the affected district.

Whenever a petition to transfer territory from one elementary district to another elementary district would create a joint elementary district or affect the boundary of an existing joint elementary district, the petition shall be presented to the county superintendent of the county where the territory is located. Such county superintendent shall notify any other county superintendents of counties with districts affected by such petition and the duties prescribed in this section for the county superintendent and

the board of county commissioners shall be performed jointly by such county officials.

History: En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971; amd. Sec. 1, Ch. 256, L. 1975.

Amendments

The 1975 amendment increased the tax-

able value limitation in item (3) of the first paragraph from \$75,000 to \$100,000 and added the provisions pertaining to a petition to submit the question of transfer to a vote in the next to last paragraph.

75-6516.1. Boundary adjustments in elementary school districts. The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution shall be addressed to the county superintendent of schools, who, upon receiving such a resolution, shall proceed as set forth in section 75-6516.

History: En. Sec. 1, Ch. 29, L. 1974.

Title of Act

An act authorizing elementary school

district trustees to petition for, and county superintendents to change district boundaries.

75-6516.2. Review of boundaries by county superintendent. A county superintendent of schools shall, at least once every three (3) years, review the existing elementary school district boundaries in the county. This review and any recommended boundary changes shall be presented by the superintendent at a hearing conducted under section 75-6516. If the superintendent orders a boundary change after the hearing, he shall forward copies of his review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

History: En. Sec. 2, Ch. 29, L. 1974.

75-6517. Limitations for creation of new elementary district. A new elementary district may be created out of the territory of an existing elementary district or districts when:

(1) * * * [Same as parent volume.]

(2) the taxable value of the taxable property of each existing district from which territory would be detached will be one hundred thousand dollars (\$100,000) or more after the territory is detached; and

(3) the ANB in any of the existing districts is not reduced to less than fifteen (15).

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973; amd. Sec. 2, Ch. 256, L. 1975.

Amendments

The 1973 amendment substituted "the ANB" at the beginning of subdivision (3)

for "the number of school census children between the ages of six (6) and sixteen (16) years according to the last complete district census reports."

The 1975 amendment increased the taxable value limitation designated in subdivision (2) from \$75,000 to \$100,000.

75-6523. Counterproposed high school district boundaries by electors and election. (1) Whenever a high school boundary commission issues an order to change high school district boundary lines, 20% or more of the electors of any elementary district with territory affected by the high school boundary change who are qualified to vote under 75-6410 may protest the boundaries established by the order of the commission within 30 days

after the date of the order. The protest shall be in the form of a petition addressed to the county superintendent and shall provide a counterproposition to the new high school boundaries established by the order of the commission for the disposition of the territory of the elementary district for high school districting purposes. The provisions of this section shall not be used in elementary districts that have approved high school boundaries under 75-6522.

(2) When the county superintendent receives a valid petition from an elementary district, he shall, within 10 days after the receipt of the petition, order the trustees of the elementary district to call an election to consider the high school boundary counterproposition described in the petition. The trustees shall call and conduct the election in the manner prescribed in this title for school elections. An elector who may vote on the proposition shall be qualified to vote under 75-6410. If a majority of the electors voting at the election approve the counterproposition, the high school boundaries described by the counterproposition shall be approved and the order of the high school boundary commission shall be amended to establish such high school boundaries. If a majority of the electors voting at the election disapprove the counterproposition, the order of the high school boundary commission shall be confirmed and shall be final.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971; amd. Sec. 12, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted the sub-

section designations; deleted "and as provided by section 75-6423" in the first sentence of subsection (2) after "receipt of the petition"; and made minor changes in phraseology, punctuation and style.

75-6525. Limitations for organization of joint high school district. The boundaries of any high school district which encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. Such high school district boundary change shall be a transfer of all the territory located in another county's portion of the same joint elementary district. No such boundary change shall be made when:

(1) the territory transfer would reduce the taxable value of the taxable property of another high school district to less than one million dollars (\$1,000,000); or

(2) a portion of the territory to be transferred is less than three (3) miles from an operating, accredited high school located in another high school district.

History: En. 75-6525 by Sec. 184, Ch. 5, L. 1971; amd. Sec. 3, Ch. 256, L. 1975.

Amendments

The 1975 amendment increased the taxable value limitation designated in subdivision (1) from \$750,000 to \$1,000,000.

75-6526. Procedure for organization of joint high school district.

No Abuse of Discretion

County commissioners and superintendent of school who had made findings after consideration of all relevant factors did not abuse their discretion in refusing

to transfer a small portion of their school district to the school district of an adjacent county. *Ballard v. Gregory*, — M —, 530 P 2d 1163.

75-6532. Cash disposition when district ceases to exist. Whenever a district shall cease to exist in any manner prescribed in this title except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) and (2). * * * [Same as parent volume.]

When the territory is assumed by more than one (1) district, the remaining cash shall be prorated between the districts on the basis of the number of children attending school and residing within the territory assumed by each district as determined by the county superintendent.

(3). * * * [Same as parent volume.]

History: En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "chil-

dren attending school and residing" for "census children residing" in the latter part of the second paragraph of subdivision (2).

75-6534. Cash disposition when new elementary district created. Whenever a new district is created, under the provisions of section 75-6518, the end-of-the-year cash balance in each fund of each district having territory that has been placed in the new district, except the debt service fund, shall be apportioned by the county superintendent on the basis of the proportion that the number of school children residing in the new district is of the total number of school children residing in the old district before the creation of the new district. After the new district has operated a school for one (1) month, the county superintendent shall order the county treasurer to transfer the cash to which the new district is entitled to the credit of the fund of the new district which corresponds with the fund from which it was transferred. The new district shall not assume any debts of the old district other than existing bonded indebtedness which remains an obligation against the taxable property of the territory included in the new district.

History: En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "school

children" for "school census children" in two places near the end of the first sentence.

CHAPTER 66—OPENING AND CLOSING OF SCHOOLS

Section

75-6601. Definition of various schools.

75-6606. Budgeting and cost-sharing when junior high school operated by elementary district and high school district operating a county high school.

75-6608. School isolation.

75-6609. Opening of a middle school.

75-6601. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense.

The trustees of any district shall designate the grade assignments for the schools of the district but for the purposes of this title each school shall be known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs or the first eight (8) grades, or their equivalents. A middle school is a school comprising the work of grades four (4) through eight (8) or any combination thereof that has been accredited as a middle school under the provisions of section 75-7502. When an accredited junior high school or an accredited six-year high school is operated by the district, grades seven (7) and eight (8), or their equivalents, shall not be considered as elementary grades.

(2) a high school when it comprises the work of one (1) or more grades of school work, or their equivalents, intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools shall be designated as follows:

(a) to (d) * * * [Same as parent volume.]

(e) a county high school is a four-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901 and any subsequent amendments thereto;

(f) * * * [Same as parent volume.]

(3) unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade twelve (12) school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

History: En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974.

Amendments

The 1974 amendment inserted the definition of "middle school" in subdivision (1);

deleted the word "or" at the end of clause (e) of subdivision (2); inserted the numerical designation (3) at the beginning of the last paragraph and made minor changes in punctuation.

75-6606. Budgeting and cost-sharing when junior high school operated by elementary district and high school district operating a county high school. (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 75-6605, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years shall be applied under 75-6905 to prorate the maximum-general-fund-budget-without-a-voted-levy between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school shall be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

History: En. 75-6606 by Sec. 204, Ch. 5, L. 1971; amd. Sec. 13, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted the sub-

section designations; deleted "the provisions of subsection (10) of section" before "75-6905" in the second sentence of sub-

section (1); and made minor changes in phraseology.

75-6608. School isolation. The trustees of any district operating an elementary school of less than ten (10) ANB or a high school of less than twenty-five (25) ANB shall annually apply to have the school classified as an isolated school. The application shall be submitted by the trustees to the county superintendent by the first day of May each year. Such application shall include:

(1) to (3). * * * [Same as parent volume.]

The county superintendent shall submit the applications to the board of county commissioners (budget board) for their consideration on or before the fifteenth (15th) day of May. The budget board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The budget board also may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of such school if they were transported to another school.

When an application is approved, the county superintendent shall submit such application to the superintendent of public instruction before the first day of June. The superintendent of public instruction shall approve or disapprove such application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on his own initiative. No elementary or high school shall be considered an isolated school until the approval of the superintendent of public instruction has been received.

History: En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973.

Amendments

The 1973 amendment inserted "annually" in the first sentence of the first paragraph; substituted "May" for "June" at the end of the first sentence of the second paragraph; substituted "criteria established by the superintendent of public instruction" for "existence of unusual obstacles to travel or the unusual distance of the nearest open school having room and facilities for the pupils of such school" in the second sentence of the second paragraph; deleted "because of conditions other than obstacles to travel or the unusual distance to the nearest open school having available room" following

"approved" in the first sentence of the third paragraph; substituted "submit" for "review" following "county superintendent shall" in the first sentence of the third paragraph; deleted "and approve or disapprove it. If the county superintendent approves the isolated classification, he shall send the application indicating his approval and the budget board's approval" in the middle of the second paragraph following "such application"; substituted "first day" for "fourth Monday" at the end of the first sentence of the third paragraph; added the clause following "classification" to the end of the second sentence of the third paragraph; and added the third sentence of the third paragraph.

75-6609. Opening of a middle school. The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is

approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and foundation program purposes during the ensuing school fiscal year.

History: En. 75-6609 by Sec. 2, Ch. 352, L. 1974. operate middle schools as an alternative to junior high schools, and amending sections 75-6601, 75-6902, 75-7502, and 75-7504, R. C. M. 1947.

Title of Act

An act authorizing school districts to

CHAPTER 67—BUDGET SYSTEM

Section

- 75-6701. Application of budget system for districts.
- 75-6702. General supervision of school budgeting system.
- 75-6709. Notice of preliminary budget filing and final budget meeting.
- 75-6711. Statement of district, cities' and towns' valuations.
- 75-6713. Final budget meeting.
- 75-6714. Final budget adjustment procedures.
- 75-6716. Adoption and expenditure limitations of final budget.
- 75-6717. Fixing and levying tax levies by board of county commissioners.
- 75-6719. Completion, filing and delivery of final budgets.
- 75-6720. Filing final budgets of joint districts.
- 75-6721. Budgeting procedure for joint districts and establishment of communication procedure.
- 75-6727. Emergency budget limitation, preparation and adoption procedures.

75-6701. Application of budget system for districts. The school budgeting procedure and provisions of this title apply to elementary, high school and community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

History: En. 75-6701 by Sec. 207, Ch. 5, L. 1971; amd. Sec. 14, Ch. 266, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

75-6702. General supervision of school budgeting system. The superintendent of public instruction has general supervision over the school budgeting procedure and provisions, as they relate to elementary and high school districts, prescribed by law and shall establish such rules as are necessary to secure compliance with the school budgeting laws.

History: En. 75-6702 by Sec. 208, Ch. 5, L. 1971; amd. Sec. 15, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted "as they

relate to elementary and high school districts"; substituted "rules" for "regulations" near the end of the section; and made minor changes in phraseology.

75-6703. Repealed.

Repeal

Section 75-6703 (Sec. 209, Ch. 5, L. 1971), relating to the board of school

budget supervisors, was repealed by Sec. 16, Ch. 277, Laws 1977.

75-6709. Notice of preliminary budget filing and final budget meeting.
 (1) Between the tenth and twentieth days of July of each year, the clerk of each district shall publish notice one time in the official newspaper of

the county stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice shall also state that the trustees will meet at 10 a.m. on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at such meeting and be heard for or against any part of the budget.

(2) Notice given under this section meets the requirement for notice contained in 84-7203, R.C.M. 1947.

History: En. 75-6709 by Sec. 215, Ch. 5, L. 1971; amd. Sec. 5, Ch. 277, L. 1977; amd. Sec. 1, Ch. 354, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 277 and once by Ch. 354. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 277, Laws of 1977, substituted

"clerk of each district" near the beginning of the first sentence for "county superintendent"; substituted "preliminary budget for the district" in the middle of the first sentence for "preliminary budgets for all districts in the county"; substituted references to trustees in two places for references to the board of school budget supervisors of the county; and made minor changes in phraseology.

Chapter 354, Laws of 1977, designated the former section as subsection (1); and added subsection (2).

75-6711. Statement of district, cities' and towns' valuations. By the second Monday of July, the department of revenue or its agent in each county shall, at the time of delivering the completed assessment book to the county clerk under the provisions of section 84-505, R.C.M., 1947, also deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities or towns, as these valuations appear in such completed assessment book.

The county clerk shall, after the second Monday in August and before or at the time of delivering the assessment book to the department of revenue or its agent under the provisions of section 84-4006, R.C.M., 1947, prepare a statement showing separately for each district and each city or town in his county, the total assessed value and the total taxable value of all property in such districts, cities, or towns, as these valuations appear in the assessment book after amendments, corrections, and additions made by the state and county tax appeal boards and entered on the assessment book. The county clerk shall immediately deliver a copy of his statement of assessed and taxable values for districts to the county superintendent and a copy of those portions of such statement for each city and town to the appropriate city or town clerk.

In the case of a joint school district, the department of revenue or its agent and the county clerk shall, at the time of delivering their respective statements to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in their county to the county superintendents and to the county

commissioners of each county in which a part of the joint school district is situated.

History: En. 75-6711 by Sec. 217, Ch. 4, L. 1971; amd. Sec. 51, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent in" for "county assessor of" throughout the sec-

tion in order to implement article VIII, section 3 of the 1972 constitution; and substituted "tax appeal board" for "board of equalization" in the second paragraph in order to implement article VIII, section 7 of the 1972 constitution.

75-6713. Final budget meeting. On the fourth Monday in July, at the hour of 10 a.m., the trustees of each district shall meet to consider the preliminary budget submitted to or prepared by the county superintendent, including all information and any attachments required by law.

The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the second Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of such district or on any item or amount contained in such budget.

History: En. 75-6713 by Sec. 219, Ch. 5, L. 1971; amd. Sec. 6, Ch. 277, L. 1977.

Amendments

The 1977 amendment rewrote the first

paragraph; substituted references to the trustees in the second paragraph for references to the budget board; and made minor changes in phraseology. For prior version, see parent volume.

75-6714. Final budget adjustment procedures. At the final budget meeting of the trustees, they shall have the power to make any changes or corrections they may deem necessary or proper in any item or amount of the preliminary budget either by eliminating the item or amount, or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the preliminary budget is in excess of the amount actually required to be expended for such item, the trustees shall reduce such amount to the amount actually required to be expended and shall enter in its minutes the reasons for such reduction.

History: En. 75-6714 by Sec. 220, Ch. 5, L. 1971; amd. Sec. 7, Ch. 277, L. 1977.

Amendments

The 1977 amendment substituted "At the final budget meeting of the trustees" for "At the meeting of the budget board" at the beginning of the section; substituted "trustees" for "budget board" twice

in the second sentence; deleted "and shall immediately send a copy of such entry in the minutes to the chairman of the trustees of the applicable district" from the end of the second sentence; deleted the former second through fourth paragraphs; and made minor changes in phraseology. For prior version, see parent volume.

75-6715. Repealed.

Repeal

Section 75-6715 (Sec. 221, Ch. 5, L. 1971), relating to the general fund budget

adjustment when the budget exceeds the maximum limitation, was repealed by Sec. 16 of Ch. 277, Laws 1977.

75-6716. Adoption and expenditure limitations of final budget. When the trustees have caused the amount of an item of the budget for the

district to be determined and set, it shall enter the amount in the portion of the budget form provided for the reporting of the final budget and upon completion of all the items, the chairman and clerk shall sign the budget form. The resulting budget shall constitute the final budget and the appropriations for the district for the current school fiscal year. The trustees and all officers and employees of the district shall be limited in making expenditures or incurring liabilities to the amount of such appropriations except that transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by law. Expenditures made, liabilities incurred, or warrants issued in excess of any of the final budget appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district and no money of the district shall ever be used to pay the same.

History: En. 75-6716 by Sec. 222, Ch. 5, L. 1971; amd. Sec. 8, Ch. 277, L. 1977.

Amendments

The 1977 amendment substituted "trustees" for "budget board" near the begin-

ning of the first sentence; deleted "of the budget board" near the end of the first sentence after "chairman and clerk"; deleted "board of" before "trustees" near the beginning of the third sentence; and made minor changes in phraseology.

75-6717. Fixing and levying tax levies by board of county commissioners. On the second Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district and any emergency budget adopted by the district during the previous school fiscal year. It shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district, all district and county taxation required to finance, within the limitations provided by law, the final budget and any emergency budget of the district.

History: En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977.

Amendments

The 1977 amendment deleted "when the members of the budget board meet as the board of county commissioners for the purpose of fixing tax levies" near the beginning of the first sentence after "second Monday in August"; deleted "as clerk of the budget board" after "county superintendent" in the first sentence; substituted

"the final adopted budget of the district" for "the final adopted budgets of all districts of the county" in the first sentence; deleted "or the county, whichever is applicable" in the second sentence after "real and personal property within the district"; substituted "emergency budget of the district" for "emergency budgets of all districts of the county" at the end of the second sentence; and made minor changes in phraseology.

75-6719. Completion, filing and delivery of final budgets. After the final budget of the district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

- (1) send the final budget information to the superintendent of public instruction on the forms provided by the superintendent, on or before the first day of September; and
- (2) deliver a copy of the final budget for the district to the county treasurer on or before the first day of September.

History: En. 75-6719 by Sec. 225, Ch. 5, L. 1971; amd. Sec. 10, Ch. 277, L. 1977.

Amendments

The 1977 amendment rewrote this section. For prior version, see parent volume.

75-6720. Filing final budgets of joint districts. The final budgets of joint districts shall be filed in the office of the county superintendent of each county in which a part of a joint district is located after approval by the trustees of the joint district.

History: En. 75-6720 by Sec. 226, Ch. 5, L. 1971; amd. Sec. 11, Ch. 277, L. 1977.

Amendments

The 1977 amendment deleted the first paragraph; and added "after approval by the trustees of the joint districts." For prior version, see parent volume.

75-6721. Budgeting procedure for joint districts and establishment of communication procedure. The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of such budget to the county superintendent of each county in which a part of the joint district is located. The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenues and determine the number of mills which need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenues and determination of the tax levies.

After determining, in accordance with law, the number of mills which need be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies shall be prepared and signed by the county superintendents involved in the computation. A copy of the statement shall be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the second Monday in August.

History: En. 75-6721 by Sec. 227, Ch. 5, L. 1971; amd. Sec. 12, Ch. 277, L. 1977.

of the first sentence; and deleted a proviso at the end of the first sentence reading "provided that two copies of the budget shall be sent to the county superintendent who is responsible for the performance of the budget duties."

Amendments

The 1977 amendment deleted "preliminary" before "budget" near the beginning

75-6727. Emergency budget limitation, preparation and adoption procedures. The meeting of the trustees to consider and adopt an emergency budget shall be open to the public and any taxpayer in the district shall have the right to appear and be heard. If at such a meeting a majority of the trustees present shall find that an emergency exists, the trustees may make and adopt a preliminary emergency budget on the regular budget form setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund which was included on the final budget of the district for the current school fiscal year. The budget shall be itemized to show the amount appropriated for each item as required on the budget form.

When the emergency is due to any increase of enrollment, the maximum amount of the emergency budget for all funds shall be determined in the following manner:

(1) to (4) * * * [Same as parent volume.]

In the event of any other type of emergency, the budget shall be limited by those expenditures deemed by the trustees to be reasonable and necessary to finance the stated conditions of the emergency, and the preliminary emergency budget shall be accompanied with the details of the proposed expenditures.

Whenever the trustees adopt a preliminary emergency budget for the transportation fund, the trustees shall attach to such budget a copy of each transportation contract which is connected with the emergency and which has been prepared and executed in accordance with the school transportation contract laws.

After the trustees have adopted the emergency budget by a majority vote of the trustees, it shall be signed by the chairman of the trustees and the clerk of the district and copies shall be sent to the county superintendent, the county treasurer, and the superintendent of public instruction.

History: En. 75-6727 by Sec. 233, Ch. 5, L. 1971; amd. Sec. 13, Ch. 277, L. 1977.

Amendments

The 1977 amendment deleted "preliminary" before "emergency budget" near the beginning of the last paragraph; substituted "copies shall be sent to the coun-

ty superintendent, the county treasurer, and the superintendent of public instruction" in the last paragraph for "two (2) copies of it shall be sent to the county superintendent as clerk of the board"; and deleted the last three sentences of the last paragraph. For prior version, see parent volume.

75-6728. Repealed.

Repeal

Section 75-6728 (Sec. 234, Ch. 5, L. 1971), relating to filing and delivery of the

adopted emergency budget, was repealed by Sec. 16, Ch. 277, Laws 1977.

CHAPTER 68—FINANCIAL ADMINISTRATION

Section

- 75-6801. Fund definitions.
- 75-6802. Application of law and superintendent of public instruction supervision.
- 75-6803. County officials for financial administration when joint district.
- 75-6805. Duties of county treasurer.
- 75-6806. Duties of trustees.
- 75-6807. Examination of district accounting records.
- 75-6808. Pecuniary interests, letting contracts, and calling for bids under certain circumstances.
- 75-6808.1. Prohibition on division of contracts to circumvent bid requirement.
- 75-6809. Entering appropriations on accounting records of county treasurer.
- 75-6809.1. Documentation of expenditures.
- 75-6810. Procedure for issuance of warrants.
- 75-6811. Recording and payment of warrants by county treasurer.
- 75-6811.1. Cancellation of outstanding warrants—duplication.
- 75-6811.2. Credit of refund.
- 75-6812. Transfer among appropriation items of a fund.
- 75-6815. Contracts for architectural services required under certain circumstances.
- 75-6816. Procedures pursuant to awarding a contract for architectural services.
- 75-6817. Negotiation of fees.
- 75-6818. Tentative and final proposals—public meetings.
- 75-6819. Encouraged to award contract to Montana firms.
- 75-6820. Prohibition against contingent fees—penalty.

75-6801. Fund definitions. As used in this title, unless the context clearly indicates otherwise, a "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(1) A "budgeted fund" means any fund for which a budget must be adopted in order to expend any moneys from such fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, postsecondary vocational-technical center fund, and any other funds so designated by the legislature shall be budgeted funds.

(2) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend any moneys on deposit in such fund. The school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, interlocal cooperative fund and any other funds so designated by the legislature shall be nonbudgeted funds.

History: En. 75-6801 by Sec. 237, Ch. 5, L. 1971; amd. Sec. 1, Ch. 424, L. 1977.

Amendments

The 1977 amendment made minor changes in style and punctuation.

75-6802. Application of law and superintendent of public instruction supervision. The school financial administration provisions of this title apply to all moneys of any elementary or high school district or any community college district, except the extracurricular moneys realized from pupil activities. The superintendent of public instruction has general supervisory authority over the school financial administration provisions, as they relate to elementary and high school districts, as prescribed by law and shall establish such rules as are necessary to secure compliance with the law.

History: En. 75-6802 by Sec. 238, Ch. 5, L. 1971; amd. Sec. 16, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted "elementary or high school" in the first sentence;

inserted "as they relate to elementary and high school districts" in the second sentence; deleted "and regulations" after "rules" near the end of the second sentence; and made minor changes in phraseology and style.

75-6803. County officials for financial administration when joint district. When all of the schools of the joint district are located in one (1) county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one (1) county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

History: En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977.

Amendments

The 1977 amendment deleted "of the same county" after "designate the county

officials" in the second sentence of the first paragraph; and deleted "as were designated to perform the budgeting duties for the joint district under the provisions of section 75-6720" from the end of the second sentence of the first paragraph.

75-6805. Duties of county treasurer. The county treasurer of each county shall:

(1) * * * [Same as parent volume.]

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school moneys on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school moneys subject to apportionment, and apportion such county and other school moneys to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) to (7) * * * [Same as parent volume.]

(8) register district warrants drawn on a budgeted fund in accordance with section 16-2604, R.C.M., 1947, when there are insufficient moneys available in the sum of moneys in all funds of the district to make payment of such warrant. Redemption of registered warrants shall be made in accordance with sections 16-2605, 16-2602, and 16-2607, R.C.M., 1947;

(9) invest the moneys of any district as directed by the trustees of the district; and

(10) * * * [Same as parent volume.]

History: En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973; amd. Sec. 3, Ch. 304, L. 1975; amd. Sec. 1, Ch. 180, L. 1977; amd. Sec. 1, Ch. 291, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 180 and once by Ch. 291. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment deleted "detailed" before "accounting" in subdivisions (3)

and (4); and substituted "for" for "by budget appropriation item within" before "each budgeted fund" in subdivision (3).

The 1975 amendment deleted "but in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R. C. M. 1947, whichever is applicable" at the end of subdivision (9).

Chapter 180, Laws of 1977, inserted "and the superintendent of public instruction" near the beginning of subdivision (2).

Chapter 291, Laws of 1977, substituted "moneys available in the sum of moneys in all funds of the district" near the end of the first sentence of subdivision (8) for "moneys available in such budgeted fund."

75-6806. Duties of trustees. The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person, other than the trustees, acting as a governing board, shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) * * * [Same as parent volume.]

(2) authorize all expenditures of district moneys, and cause warrants to be issued for the payment of lawful obligations;

(3) * * * [Same as parent volume.]

(4) invest any moneys of the district whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in savings or time

deposits in a state or national bank, building or loan association or savings and loan association insured by the F.D.I.C. or the F.S.L.I.C. located in the county in which the district is located, provided however that if no such bank, building and loan association or savings and loan association is located in the county where the district is situated such investment may be made in said banks or associations located in adjacent counties or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund, or the building fund at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 79, chapter 3, R. C. M. 1947;

(5) report annually to the county superintendent not later than the first day of August, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated;

(6) to (8) * * * [Same as parent volume.]

History: En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973; amd. Sec. 4, Ch. 304, L. 1975.

Amendments

Chapter 137, Laws of 1973, deleted from subdivision (5) a final sentence reading: "Any elementary district that fails to submit the annual report by the time required shall not be entitled to receive any apportionment of the state interest and income moneys and such forfeit in money shall be apportioned to the other elementary districts of the county."

Chapter 366, Laws of 1973, deleted "accepting payments under employee con-

tracts" from the beginning of subdivision (2); deleted "by the written approval of claims for such expenditures" following "district moneys" in subdivision (2); and substituted "lawful obligations" for "approved claims and payments under employee contracts" at the end of subdivision (2).

The 1975 amendment rewrote subdivision (4) which read: "invest any moneys of the district in accordance with subsection (2) of section 16-2050 or subsection (8) of section 16-2618, R. C. M., 1947, whichever is applicable, whenever in the judgment of the trustees such investment would be advantageous to the district."

75-6807. Examination of district accounting records. (1) The accounting records of all districts shall be audited annually by the department of community affairs in accordance with 82-4516.

(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor, or the county treasurer if there is no county auditor, shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July 15 for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and shall:

(a) return the accounting records to the district no later than August 15;

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the county superintendent and the county clerk and recorder.

History: En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; substituted "all districts" for "all first- and second-class district and each third-class district maintaining a high school" near the beginning

of subsection (1); substituted "department of community affairs" for "state examiner" near the end of subsection (1); substituted "82-4516" for "section 82-1008" at the end of subsection (1); redesignated former subdivisions (1) through (3) as subdivisions (2)(a) through (2)(c); and made minor changes in phraseology, punctuation and style.

75-6808. Pecuniary interests, letting contracts, and calling for bids under certain circumstances. (1) It is unlawful for any trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract for the erection of any school building or for warming, ventilating, furnishing, or repairing the same; or

(b) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools; or

(c) be employed in any capacity by the school district of which he is trustee.

(2) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of \$4,000, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(3) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(4) With regard to contracting for work or supplies, the board of trustees of a community college district are subject to 75-8118.

History: En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977.

Amendments

The 1973 amendment completely rewrote and consolidated into one paragraph

the former second paragraph and numbered paragraphs (1) to (3). For prior version, see parent volume.

The 1977 amendment inserted the subsection designations; inserted "any contract for" in subdivision (1)(a); and made minor changes in phraseology, punctuation and style.

75-6808.1. Prohibition on division of contracts to circumvent bid requirement. Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public

work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders or by any similar device. This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time, but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

History: En. Sec. 2, Ch. 149, L. 1973.

Title of Act

An act to amend section 75-6808, R. C.

M. 1947, to allow all classes of school districts to contract without letting bids for less than four thousand dollars (\$4,000).

75-6809. Entering appropriations on accounting records of county treasurer. When the county treasurer receives the final budgets of the districts from the county superintendent, he shall open a fund for each budgeted fund included on the final budget of each district by entering the amount appropriated for the fund on his accounting record.

Whenever the county treasurer receives a final emergency budget for a district from the county superintendent, he shall increase the amount of the regularly adopted final budget by the amount of the emergency budgeted fund included on the final emergency budget.

History: En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973.

Amendments

The 1973 amendment substituted "the fund" for "each item" near the end of the first paragraph; substituted "increase

the amount" for "increase the item appropriations" in the middle of the second paragraph; and deleted "budget appropriations for each item of each" following "amount of the emergency" near the end of the second paragraph.

75-6809.1. Documentation of expenditures. The expenditure of district moneys, other than employee contract payments, may be authorized by the trustees when:

(1) payee signed claims, wherein the payee attests to the accuracy of the claim and that he has not received the claimed amount, have been issued to the district or

(2) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

The intention of this section is to provide sufficient documentation for each expenditure of district moneys.

History: En. Sec. 1, Ch. 366, L. 1973.

Title of Act

An act deleting the requirement that

school districts have signed claims for an expenditure when adequate documentation is provided by the payee; and amending section 75-6806, R. C. M. 1947.

75-6810. Procedure for issuance of warrants. The trustees of each district shall issue all warrants and the warrants shall identify:

(1) to (3). * * * [Same as parent volume.]

Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the provisions of chapter 13 of Title 59, R.C.M., 1947, provided that the facsimile signature device shall not be available to the other countersigner of the warrant.

The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee; the duplicate shall be sent immediately to the county treasurer; and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original."

However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

History: En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973.

Amendments

The 1973 amendment deleted "in triplicate" following "all warrants" in the

preliminary clause; and inserted the first and second sentences and "When the warrants are issued in triplicate" at the beginning of the third sentence in the second paragraph after the numbered subdivisions.

75-6811. Recording and payment of warrants by county treasurer. Immediately after receiving a duplicate warrant or a warrant listing from a district, the county treasurer shall enter the amount and number of such warrant on his accounting records under the fund identified on such warrant or listing. The recording of the warrants shall allow for the computation of the unexpended amount of a budgeted fund from the accounting records.

Whenever it appears to the county treasurer that a budgeted fund is so nearly exhausted that the issuance of another warrant will cause the overexpenditure of such budget, the county treasurer shall immediately notify the appropriate district of the expended condition of the budget and the district shall not issue another warrant against such fund that would overexpend the budget.

After receiving a duplicate warrant or warrant listing that contains a warrant which will exceed the unexpended balance of a budgeted fund, the county treasurer shall immediately notify the district of such overdraft. If the district has not corrected the overdraft before the presentation of the warrant for payment, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Budget" and return the warrant to the person presenting it for payment.

Whenever a warrant will overexpend the cash balance of a nonbudgeted fund, the county treasurer shall refuse to pay or register such warrant, and shall endorse across the face of such warrant "Payment and Registration Refused, Insufficient Funds" and return the warrant to the person presenting it for payment. The county treasurer shall immediately notify the district of such refusal to pay or register the warrant drawn on a nonbudgeted fund.

History: En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973.

Amendments

The 1973 amendment inserted "or a warrant listing" following "duplicate warrant" and "or listing" at the end of the first sentence of the first paragraph; deleted "and appropriation item" following "under the fund" in the first sentence of the first paragraph; substituted "unexpended amount of a budgeted fund" for "unexpended appropriation amount of appropriation items of a budgeted fund" in the second sentence of the first paragraph; deleted "an appropriation item of" before "a budgeted fund" in the second paragraph; twice substituted "budget" for "appropriation item" in the second paragraph; substituted "fund that would

overexpend the budget" for "appropriation item until its budgeted amount has been increased" at the end of the second paragraph; inserted "or a warrant listing that contains a warrant" near the beginning of the third paragraph; deleted "an original or revised amount of an appropriation item" following "unexpended balance of" in the first sentence of the third paragraph; deleted "an appropriation item" following "the overdraft" near the beginning of the second sentence of the third paragraph; deleted "original" prior to "warrant for payment" in the second sentence of the third paragraph; substituted "'Budget'" for "'Appropriation'" near the end of the third paragraph; and deleted "of registration" at the end of the third paragraph.

75-6811.1. Cancellation of outstanding warrants—duplication. The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least one (1) year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by section 93-2603 has elapsed. When a warrant has been canceled and the obligation has not terminated under section 93-2603, the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

History: En. Sec. 1, Ch. 365, L. 1973.

payment of issued warrants one (1) year after the date of issue.

Title of Act

An act to allow school districts to stop

75-6811.2. Credit of refund. Whenever a school district deposits with the county treasurer a refund or rebate, the county treasurer shall credit the budgeted fund to which it is deposited and restore the school district's spending authority in that fund in the amount of the refund or rebate.

History: En. 75-6811.2 by Sec. 1, Ch. 329, L. 1977.

Title of Act

An act to restore the spending authority of a school district upon the deposit of a refund or rebate.

75-6812. Transfer among appropriation items of a fund. Whenever it appears to the trustees of any district that the appropriated amount of any item of a budgeted fund of the final budget or the emergency budget is in excess of the amount actually required during the school fiscal year for such appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

Such transfers shall not be made between different funds of the same district or between similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district.

History: En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973.

Amendments

The 1973 amendment substituted "enter the authorized transfers upon the per-

manent records of the district" for "immediately notify the county treasurer in writing of any transfer between appropriation items and the county treasurer shall enter such transfer on his accounting records" at the end of the second paragraph.

75-6815. Contracts for architectural services required under certain circumstances. Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of a school district exceeds fifty thousand dollars (\$50,000) and requires architectural services, such services shall be by contract.

History: En. 75-6815 by Sec. 1, Ch. 370, L. 1975.

tract for architectural services under certain circumstances; and establishing the procedures for awarding such contracts.

Title of Act

An act requiring school districts to con-

75-6816. Procedures pursuant to awarding a contract for architectural services. The trustees of a school district shall adhere to the following procedure in awarding a contract for architectural services when such services are required:

(1) Interview representatives of at least three (3) certified architectural firms, provided that at least three (3) such firms apply, after advertising that interviews will be conducted for the purpose of procuring architectural services. The advertisements shall be published in a newspaper of general state-wide circulation at least twice each week for three (3) consecutive weeks, or no less than two (2) times in the semimonthly publication of the Montana state department of administration that provides for the state-wide announcement of projects requiring professional services. The advertisements shall include a description of the proposed work for which architectural services are needed. Following a reasonable time period after all interested firms have notified the trustees of their interest, the trustees shall give reasonable public notice of the schedule of interviews. These interviews shall be open to the public.

(2) During each interview, the trustees shall:

(a) review current statements of the qualifications and past performance records of the firm, as provided by the firm;

(b) conduct discussions with the firm regarding anticipated concepts and the relative merits of alternative methods for furnishing the required services;

(c) consider questions and testimony from the public;

(d) consider or request any other information of the firm which they, the trustees, deem relevant.

The trustees may interview all firms together or separately.

(3) Upon completion of the interviews, and after a reasonable time

period, the trustees shall give reasonable public notice of their tentative selection of a firm.

(4) The trustees shall select one (1) firm from those interviewed and shall give reasonable public notice of their final selection.

(5) The trustees shall give reasonable public notice of and hold a public meeting to consider any questions and testimony from the public regarding the architectural services to be performed.

(6) For the purposes of this act, "reasonable public notice" means a notice or advertisement published in a newspaper or newspapers that will give notice to the largest number of people in the district as determined by the trustees; and "reasonable time period" means a time between public meetings and public notices sufficient to allow the public to be cognizant of such events as determined by the trustees.

History: En. 75-6816 by Sec. 2, Ch. 370,
L. 1975.

75-6817. Negotiation of fees. After selecting a firm, the trustees shall negotiate with the selected firm a fair and reasonable fee for the architectural services as described by the school district's scope of the work. In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.

History: En. 75-6817 by Sec. 3, Ch. 370,
L. 1975.

75-6818. Tentative and final proposals—public meetings. Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two (2) of these meetings, one (1) to review the firm's preliminary plans and one (1) to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings, the trustees shall consider any questions and testimony from the public.

History: En. 75-6818 by Sec. 4, Ch. 370,
L. 1975.

75-6819. Encouraged to award contract to Montana firms. The trustees are encouraged, but not required, to award architectural contracts to firms based or operating in Montana.

History: En. 75-6819 by Sec. 5, Ch. 370,
L. 1975.

75-6820. Prohibition against contingent fees—penalty. (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent

upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsections (1), (2), or (3) of this section shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

History: En. 75-6820 by Sec. 6, Ch. 370,
L. 1975.

CHAPTER 69—STATE EQUALIZATION AID TO PUBLIC SCHOOLS

Section

- 75-6902. Definition and calculation of average number belonging (ANB).
- 75-6903. Circumstances under which the regular average number belonging may be increased.
- 75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.
- 75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools.
- 75-6905.1. Seventh and eighth grade ANB.
- 75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing.
- 75-6907. Definition of interest and income moneys.
- 75-6908. Distribution of interest and income moneys by superintendent of public instruction.
- 75-6912. Basic county tax and other revenues for county equalization of elementary district foundation program.
- 75-6913. Basic special levy and other revenues for county equalization of high school district foundation program.
- 75-6914. Apportionment of county equalization moneys by county superintendent.
- 75-6915. Formula for apportionment of county equalization moneys.
- 75-6916. Definition of and revenue for state equalization aid.
- 75-6917. Purpose of state equalization aid and duties of the board of public education for distribution.
- 75-6917.1. Distribution of excess state equalization moneys.
- 75-6918. Duties of the superintendent of public instruction for state equalization aid distribution.
- 75-6921. Additional state levy for state deficiency.
- 75-6922. Permissive amount and permissive levy.
- 75-6923. Additional levy for general fund and election for authorization to impose.
- 75-6927. Proration and calculation of foundation program for a joint district.

75-6901. Purpose and definition of foundation program and general fund.

Constitutionality Although enacted in anticipation of constitutional change, this statute did not become effective until after the effective

date of the new constitution, and is therefore constitutionally valid. State ex rel. Woodahl v. Straub, 164 M 141, 520 P 2d

776, certiorari denied 419 US 845, 42 L Ed 2d 73, 95 S Ct 79.

75-6902. Definition and calculation of average number belonging (ANB). The term "average number belonging" or "ANB" shall mean the average number of regularly enrolled, full-time pupils attending the public schools of a district. Average number belonging shall be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the current school fiscal year, and by dividing such total by one hundred eighty (180). Attendance for a part of a morning session or a part of an afternoon session by a pupil shall be counted as attendance for one-half ($\frac{1}{2}$) day. In calculating the ANB for pupils enrolled in a program established under section 75-7507 prior to January 1, 1974, or pursuant to section 75-7507 (1), attendance at, or absence from, a regular session of the program for at least two hours of either a morning or an afternoon session will be counted as one-half ($\frac{1}{2}$) of a day attended or absent as the case may be. If a variance has been granted as provided in section 75-7403, ANB will be computed in a manner prescribed by the superintendent of public instruction but in no case shall the ANB exceed one-half ($\frac{1}{2}$) for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than ten (10) consecutive school days, including pupil instruction related days, his absence after the tenth (10th) day of absence shall not be included in the aggregate days of absence and his enrollment in the school shall not be considered in the calculation of the average number belonging until he resumes attendance at school.

If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he shall be considered a full-time special pupil but shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program he shall be considered regularly enrolled for ANB purposes.

The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district shall be calculated, individually, for each school except that when:

(1) * * * [Same as parent volume.]

(2) a junior high school which has been approved and accredited as a junior high school is located within the incorporated limits of a city or town in which a high school is located, all of the regularly enrolled, full-time pupils of the junior high school shall be considered as high school district pupils for the purposes of calculating the average number belonging of the high schools located within the incorporated limits of such city or town;

(3) a middle school has been approved and accredited, in which case pupils below the seventh grade shall be considered elementary school pupils for ANB purposes, and the seventh and eighth grade pupils shall be considered high school pupils for ANB purposes; or

(4) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school shall not be eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for such district.

When eleventh or twelfth grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB shall be determined in a manner prescribed by the superintendent of public instruction.

History: En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975.

Amendments

The 1973 amendment inserted the fourth sentence in the first paragraph; and deleted a final paragraph permitting the inclusion of six-year-old kindergarten pupils in computing ANB.

Chapter 343, Laws of 1974, inserted the second paragraph pertaining to students enrolled in the regular program and in the special education program.

Chapter 352, Laws of 1974, inserted subdivision (3) pertaining to middle schools; redesignated former subdivision (3) as subdivision (4); and substituted "board of public education" for "board of education" in subdivision (4).

Chapter 373, Laws of 1974, inserted in the first paragraph the sentence pertaining to computations where a variance has been granted as provided in section 75-7403.

The 1975 amendment added the last paragraph pertaining to equivalent ANB for eleventh or twelfth grade students regularly enrolled on a part-time basis in high schools.

75-6903. Circumstances under which the regular average number belonging may be increased. The average number belonging of a school for a given school fiscal year, calculated in accordance with the ANB formula prescribed in section 75-6902, may be increased when:

(1) to (3) * * * [Same as parent volume.]

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging shall be based on estimates of increased enrollment approved by the superintendent of public instruction and shall be computed in the manner prescribed by section 75-6904;

(5) for the initial year of operation of a program established under section 75-7507 (1), the ANB to be used for budget purposes is the same as one-half ($\frac{1}{2}$) the number of five (5) year old children residing in the district as of October 1 of the preceding school year, either as shown on the official school census, or as determined by some other procedure approved by the superintendent of public instruction;

(6) a special full-time pupil, as defined in section 75-6902, in a given school year will no longer be considered a special full-time pupil in the ensuing school year. The superintendent of public instruction may grant one ANB for such pupil for the ensuing school year; or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight (8) semesters or the equivalent amount of secondary school enrollment. The increase shall be established by the trustees as though the student had attended to the end of the school year and shall be approved, disapproved, or adjusted by the superintendent of public instruction.

History: En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974; amd. Sec. 1, Ch. 141, L. 1975.

Amendments

The 1973 amendment added the provisions of subdivision (5).

The 1974 amendment deleted former subdivision (4) relating to allowable increase in the average number belonging in a dis-

trict conducting a special education class or program; redesignated former subdivision (6) as (5); added subdivision (6); and made minor changes in phraseology and punctuation.

The 1975 amendment added the provisions of subdivision (7).

Effective Date

Section 5 of Ch. 345, Laws 1973 read "This act is effective on July 1, 1974."

75-6904. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in subsection (5) of section 75-6903, may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

(1) The average number belonging used for the establishment of the foundation program for the current year and for each year of the immediately preceding three (3) years shall be used to calculate the percentage increase or decrease in average number belonging for the current year's foundation program over the immediately preceding year, and similarly calculate the percentage increase or decrease in average number belonging for each of the two preceding years. The three (3) annual percentage increases or decreases shall be averaged to obtain the average annual percentage increase or decrease in average number belonging.

(2) The district shall estimate the current year's average number belonging by totaling the aggregate days of attendance and aggregate days of absence realized in the district through April 30 and dividing such total by one hundred eighty (180). The resulting average number belonging shall be increased by the ratio that the total number of planned school days in the current school fiscal year bears to the number of school days completed through April 30.

(3) and (4). * * * [Same as parent volume.]

(5) The budget board shall review the application to determine if the district is eligible for an increase in its foundation program. The budget board may accept, reject, or adjust the district's estimate of the ensuing year's average number belonging. After approving an estimate, the budget board shall:

(a). * * * [Same as parent volume.]

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection (7) if the increase in subsection (5) (a) above is at least twice the average annual percentage increase as provided in subsection (1) above or six per cent (6%) whichever is larger.

(6) and (7). * * * [Same as parent volume.]

History: En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973.

Amendments

The 1973 amendment deleted "To deter-

mine if a district is eligible for an increased foundation program due to an unusual enrollment increase," from the beginning of subsection (1); deleted "When a district is eligible under subsection (1),"

from the beginning of subsection (2); deleted "as provided in subsection (1) above and to determine if the estimate of the anticipated increase in average number belonging is substantiated" from the first

sentence in subsection (5); and added "or six per cent (6%) whichever is larger" to the end of paragraph (b) of subsection (5).

75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools. The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for 1977-78

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be \$10,386 if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be \$10,386 plus \$434 per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be \$14,292 plus \$434 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be \$22,818 plus \$271.80 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of \$1,008 shall be decreased at the rate of 98 cents for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils. For a school having an ANB of more than 100 pupils, the maximum of \$949.60 shall be decreased at the rate of 90 cents for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum shall not exceed \$770.60 for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

High School Schedule for 1977-78

(7) For each high school having an ANB of 24 or fewer pupils, the maximum shall be \$59,166.

(8) For a secondary school having an ANB of more than 24 pupils, the maximum \$2,465 shall be decreased at the rate of \$13.45 for each addi-

tional pupil until the ANB shall have reached a total of 40 such pupils. For a school having an ANB of more than 40 pupils, the maximum of \$2,250 shall be decreased at the rate of \$13.45 for each additional pupil until the ANB shall have reached 100 pupils. For a school having an ANB of more than 100 pupils, a maximum of \$1,443 shall be decreased at the rate of \$2.25 for each additional pupil until the ANB shall have reached 200 pupils. For a school having an ANB of more than 200 pupils, the maximum of \$1,218 shall be decreased by \$1.24 for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum of \$1,095 shall be decreased at the rate of 23 cents until the ANB shall have reached 600 pupils. For a school having an ANB over 600 pupils, the maximum shall not exceed \$1,027 per pupil.

(9) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

Elementary School Schedule for 1978-79 and Succeeding Years

(10) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be \$11,113 if said school is approved as an isolated school.

(11) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be \$11,113 plus \$464.40 per pupil on the basis of the average number belonging over nine.

(12) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be \$15,292 plus \$464.40 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(13) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be \$24,415 plus \$290.90 per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(14) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than 40 and employing a minimum of 3 teachers, the maximum of \$1,079 shall be decreased at the rate of \$1.05 for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils. For a school having an ANB of more than 100 pupils, the maximum of \$1,016 shall be decreased at the rate of 96 cents for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum shall not exceed \$824.60 for each pupil.

(15) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed

herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

**High School Schedule for 1978-79
and Succeeding Years**

(16) For each high school having an ANB of 24 or fewer pupils, the maximum shall be \$63,308.

(17) For a secondary school having an ANB of more than 24 pupils, the maximum \$2,638 shall be decreased at the rate of \$14.39 for each additional pupil until the ANB shall have reached a total of 40 such pupils. For a school having an ANB of more than 40 pupils, the maximum of \$2,408 shall be decreased at the rate of \$14.39 for each additional pupil until the ANB shall have reached 100 pupils. For a school having an ANB of more than 100 pupils, a maximum of \$1,544 shall be decreased at the rate of \$2.41 for each additional pupil until the ANB shall have reached 200 pupils. For a school having an ANB of more than 200 pupils, the maximum of \$1,304 shall be decreased by \$1.32 for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum of \$1,171 shall be decreased at the rate of 24 cents until the ANB shall have reached 600 pupils. For a school having an ANB over 600 pupils, the maximum shall not exceed \$1,098 per pupil.

(18) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

(19) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by this section, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the 7th and 8th grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (a) by the ANB calculated in subsection (b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

(d) subtract the amount determined in subsection (c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district.

(20) For the purpose of establishing the maximum-budget-without-a-vote amount for current year special education program for a school district, the superintendent of public instruction will determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in section 75-7813.1;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of this section. The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.

(21) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this chapter, then subject to the approval of the program by the superintendent, under the emergency budget provisions of section 75-6723 (5), allowable costs approved under the budgeting provisions of section 75-6905 (20) for the operation of the program during the given year may be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as "previous year special education expenses" in the school district budget for the subsequent school year.

(22) The sum of the previous year special education expenses as defined in subsection (21) above, and the maximum-budget-without-a-vote for current year special education as defined in subsection (20) shall be the special education budget for accounting purposes.

The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in sections 75-6902 and 75-6903 to obtain the total maximum-budget-without-a-vote for the district.

History: En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977.

Amendments

The 1973 amendment updated the schedules two years for each classification; and increased funding levels in each category; for prior funding levels see parent volume.

Chapter 345, Laws of 1974, added subdivisions (20) to (22) to the "High School Schedule for 1974-75 and Succeeding Years" and deleted a final paragraph which read: "The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district."

Chapter 347, Laws of 1974, increased the funding levels from \$8,037 to \$8,149.50 in subdivision (10); from \$8,037 plus \$302

per pupil to \$8,149.50 plus \$314.50 per pupil in subdivision (11); from \$10,747 plus \$390 per pupil to \$10,972 plus \$402.50 per pupil in subdivision (12); from \$18,047 plus \$278 per pupil to \$18,272 plus \$290.50 per pupil in subdivision (3) from \$668 to \$680.50, from \$642 to \$654.50, and from \$539 to \$551.50, respectively, in subdivision (14); from \$38,362 to \$38,662 in subdivision (16); and from \$1,598.25 to \$1,610.75, from \$1,442.25 to \$1,454.75, from \$1,045.25 to \$1,057.75 from \$830.25 to \$842.75, from \$782.25 to \$794.75, and from \$744.25 to \$756.75, respectively, in subdivision (17).

The 1975 amendment updated the schedules two years for each classification; increased the funding levels from \$7,806.50 to \$8,613 in subdivision (1); from \$7,806.50 plus \$276.50 per pupil to \$8,613 plus \$360 per pupil in subdivision (2); from \$10,286 plus \$364.50 per pupil to \$11,853 plus \$360 per pupil in subdivision (3); from \$17,586 plus \$252.50 per pupil to \$18,924 plus \$225.40 per pupil in subdivision (4); from \$642.50 decreased at the rate of \$.43 to \$836.30 decreased at the rate of \$.81, from \$616.50 decreased at the rate of \$.51 to \$787.60 decreased at the rate of \$.74, and from \$513.50 to \$639.10, respectively in subdivision (5); from \$37,510 to \$49,051 in subdivision (7); from \$1,562.75 decreased at the rate of \$.975 to \$2,044 decreased at the rate of \$11.15, from \$1,406.75 decreased at the rate of \$.60 to \$1,865 decreased at the rate of \$11.15, from \$1,009.75 decreased at the rate of \$.215 to \$1,197 decreased at the rate of \$1.86, from \$794.75 decreased at the rate of \$.49 to \$1,010 decreased at the rate of \$1.02, from \$746.75 decreased at the rate of \$1.13 to \$907.60 decreased at the rate of \$.19, and from \$708.75 to \$851.10, respectively, in subdivision (8); from \$8,149.50 to \$9,707 in subdivision (10); from \$8,149.50 plus \$314.50 per pupil to \$9,707 plus \$405.70 per pupil in subdivision (11); from \$10,972 plus \$402.50 per pupil to \$13,358 plus \$405.70 per pupil in subdivision (12); from \$18,272 plus \$290.50 per pupil to \$21,326 plus \$254.10 per pupil in subd. (13); from \$680.50 decreased at the rate of \$.43 to \$942.50 decreased at the rate of \$.92, from \$654.50 decreased at the rate of \$.51 to \$887.50 decreased at the rate of \$.84, from \$551.50 to \$720.20 respectively in subdivision (14); from \$38,662 to \$55,293 in subdivision (16); from \$1,610.75 decreased at the rate of \$.975 to \$2,304 decreased at the rate of \$12.57, from \$1,454.75 decreased at the

rate of \$.60 to \$2,103 decreased at the rate of \$12.57, from \$1,057.75 decreased at the rate of \$.215 to \$1,349 decreased at the rate of \$.210, from \$842.75 decreased at the rate of \$.49 to \$1,139 decreased at the rate of \$1.15, from \$794.75 decreased at the rate of \$.13 to \$1,023 decreased at the rate of \$.21 and from \$756.75 to \$959.40, respectively in subdivision (17).

The 1977 amendment updated the schedules two years for each classification; increased the funding levels from \$8,613 to \$10,386 in subdivision (1); from \$8,613 plus \$360 to \$10,386 plus \$434 per pupil in subdivision (2); from \$11,853 plus \$360 to \$14,292 plus \$434 per pupil in subdivision (3); from \$18,924 plus \$225.40 to \$22,818 plus \$271.80 per pupil in subdivision (4); from \$836.30 decreased at the rate of \$.81 to \$1,008 decreased at the rate of \$.98, from \$787.60 decreased at the rate of \$.74 to \$949.60 decreased at the rate of \$.90, from \$639.10 to \$770.60 respectively in subdivision (5); from \$49,051 to \$59,166 in subdivision (7); from \$2,044 decreased at the rate of \$11.15 to \$2,465 decreased at the rate of \$13.45, from \$1,865 decreased at the rate of \$11.15 to \$2,250 decreased at the rate of \$13.45, from \$1,197 decreased at the rate of \$1.86 to \$1,443 decreased at the rate of \$2.25, from \$1,010 decreased at the rate of \$1.02 to \$1,218 decreased at the rate of \$1.24, from \$907.60 decreased at the rate of \$.19 to \$1,095 decreased at the rate of \$.23, from \$851.10 to \$1,027 respectively in subdivision (8); from \$9,707 to \$11,113 in subdivision (10); from \$9,707 plus \$405.70 to \$11,113 plus \$464.40 in subdivision (11); from \$13,358 plus \$405.70 to \$15,292 plus \$464.40 in subdivision (12); from \$21,326 plus \$254.10 to \$24,415 plus \$290.90 in subdivision (13); from \$942.50 decreased at the rate of \$.92 to \$1,079 decreased at the rate of \$1.05, from \$887.50 decreased at the rate of \$.84 to \$1,016 decreased at the rate of \$.96, from \$720.20 to \$824.60 respectively in subdivision (14); from \$55,293 to \$63,308 in subdivision (16); and from \$2,304 decreased at the rate of \$12.57 to \$2,638 decreased at the rate of \$14.39, from \$2,103 decreased at the rate of \$12.57 to \$2,408 decreased at the rate of \$14.39, from \$1,349 decreased at the rate of \$2.10 to \$1,544 decreased at the rate of \$2.41, \$1,139 decreased by \$1.15 to \$1,304 decreased by \$1.32, \$1,023 decreased at the rate of \$.21 to \$1,171 decreased at the rate of \$.24, \$959.40 to \$1,098 respectfully in subdivision (17); and made a minor change in phraseology.

75-6905.1. Seventh and eighth grade ANB. The ANB calculated for grades seven (7) and eight (8) shall be at the high school ANB rate provided that the school meets the standards for accreditation of a middle

school. When such pupils are actually enrolled in an elementary school, the amount of the general fund budget per ANB shall be the same as that of the high school district within which the elementary school is located. To determine the total enrollment of such an elementary school for ANB purposes the seventh and eighth grade pupils shall be included in such total.

History: En. 75-6905.1 by Sec. 1, Ch. 354,
L. 1974.

Title of Act

An act providing that all seventh and eighth grade pupils be counted as high school pupils for ANB budgeting.

75-6906. Definition of foundation program and its proportion of the maximum-general-fund-without-a-voted-levy schedule amount, and nonisolated school foundation program financing. (1) As used in this title, the term "foundation program" shall mean the minimum operating expenditures as established herein, that are sufficient to provide for the educational program of a school. It shall be financed by (a) county equalization moneys, (b) state equalization aid, and (c) when required, moneys from an additional state levy for a state deficiency. The foundation program relates only to those expenditures authorized by a district's general fund budget and shall not include expenditures from any other fund.

(2) The dollar amount of the foundation program shall be eighty per cent (80%) of the maximum-general-fund-budget-without-a-voted-levy limitation as set forth in the schedules in section 75-6905. The foundation program of an elementary school having an ANB of nine (9) or fewer pupils which is not approved as an isolated school under the provisions of section 75-6608 shall be eighty per cent (80%) of the schedule amount but the county and state shall participate in financing one-half ($\frac{1}{2}$) of the foundation program and the district shall finance the remaining one-half ($\frac{1}{2}$) by a tax levied on the property of the district. When a school of nine (9) or fewer pupils is approved as isolated under the provisions of section 75-6608, the county and state shall participate in the financing of the total amount of the foundation program.

(3) Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education shall be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration chapter of this title. The unexpended balance of the special education accounting budget shall carry over to the next year to reduce the amount of funding required to finance the district's ensuing year's maximum-budget-without-a-vote for special education.

History: En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974.

first paragraph a third sentence reading: "In addition, the elementary school foundation programs shall be supported by interest and income moneys."

Amendments

The 1973 amendment deleted from the

The 1974 amendment inserted the numerical subsection designations at the be-

ginning of the first and second paragraphs; substituted "additional state levy" for "additional county levy" in clause (c) in subsection (1); added subsection (3); and made minor changes in style.

75-6907. Definition of interest and income moneys. As used in this title, the term "interest and income moneys" means the total of the following revenues, as provided for by article X, section 5 of the 1972 Montana constitution:

(1) to (4). * * * [Same as parent volume.]

The remaining five per cent (5%) of such revenues shall be annually credited to the public school fund.

History: En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted the

reference to the 1972 constitution in the preliminary paragraph for a reference to section 5, article XI of the 1889 constitution; and made a minor change in phraseology.

75-6908. Distribution of interest and income moneys by superintendent of public instruction. The state board of land commissioners shall annually deposit the interest and income moneys for each calendar year into the earmarked revenue fund for state equalization aid provided for by section 75-6916, R.C.M. 1947, by the last business day of February following the calendar year in which the moneys were received.

History: En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973.

Amendments

The 1973 amendment substituted "into the earmarked revenue fund for state equalization aid provided for by section

75-6916, R. C. M. 1947" for "to the credit of the account established by the state treasurer for such moneys"; and deleted four paragraphs relating to distribution of the interest and income moneys. For previous text, see parent volume.

75-6909 to 75-6911. Repealed.

Repeal

Sections 75-6909 to 75-6911 (Secs. 259 to 261, Ch. 5, L. 1971), relating to ap-

portionment and distribution of interest and income moneys, were repealed by Sec. 15, Ch. 137, Laws 1973.

75-6912. Basic county tax and other revenues for county equalization of elementary district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic tax of twenty-five (25) mills on the dollars of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of the elementary school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenues identified in subsections (1) through (6) below shall be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county. If the basic levy of twenty-five (25) mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus funds to the state treasurer for deposit to the

earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

The proceeds realized from the county's portion of the levy prescribed by this section and the revenues from the following sources shall be used for the equalization of the elementary district foundation programs of the county as prescribed in section 75-6914 and a separate accounting shall be kept of such proceeds and revenues by the county treasurer in accordance with subsection (1) of section 75-6805;

(1) to (6). * * * [Same as parent volume.]

History: En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted "for the purposes of local and state foundation program support" for "unless a basic levy of less than twenty-five (25) mills is sufficient to finance the total amount of the foundation programs of all the elementary districts of the county" at the end of the first sentence; inserted the portion of the second sentence preceding the colon; substituted "the amount of revenue raised by this levy which is retained by the county" for "if a lesser levy will be sufficient"

after "In order to determine" following the colon in the second sentence; substituted "If the basic levy of twenty-five (25) mills produces more than is required" at the beginning of the third sentence for "If a basic levy of less than twenty-five (25) mills is sufficient"; substituted the final part of the third sentence, beginning with "order the county treasurer to remit," for "fix a basic levy of such amount"; deleted from the first paragraph a final sentence prohibiting state equalization aid to elementary districts levying less than 25 mills; and inserted "the county's portion of" before "the levy" near the beginning of the second paragraph.

75-6913. Basic special levy and other revenues for county equalization of high school district foundation program. It shall be the duty of the county commissioners of each county to levy an annual basic special tax for high schools of fifteen (15) mills on the dollar of the taxable value of all taxable property within the county for the purposes of local and state foundation program support. The revenue to be collected from this levy shall be apportioned to the support of the foundation programs of high school districts in the county and to the earmarked revenue fund, state equalization aid account, in the following manner: In order to determine the amount of revenue raised by this levy which is retained by the county, the estimated revenues identified in subsections (1) and (2) below shall be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county. If the basic levy for fifteen (15) mills produces more revenue than is required to finance the difference determined above, the county commissioners shall order the county treasurer to remit the surplus to the state treasurer for deposit to the earmarked revenue fund, state equalization aid account, not later than June 1 of the fiscal year for which the levy has been set.

The proceeds realized from the county's portion of the levy prescribed in this section and the revenues from the following sources shall be used for the equalization of the high school district foundation programs of the county as prescribed in section 75-6914, and a separate accounting shall be kept of these proceeds by the county treasurer in accordance with subsection (1) of section 75-6805:

(1) and (2). * * * [Same as parent volume.]

History: En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted "for the purposes of local and state foundation program support" for "unless a basic special levy for high schools of less than fifteen (15) mills is sufficient to finance the total amount of the foundation programs of all the high school districts of the county" at the end of the first sentence; inserted the portion of the second sentence preceding the colon; substituted "the amount of revenue raised by this levy which is retained by the county" for "if a lesser levy will be sufficient" shortly

after the colon in the second sentence; substituted "If the basic levy for fifteen (15) mills produces more revenue than is required" at the beginning of the third sentence for "If a basic special levy for high schools of less than fifteen (15) mills is sufficient"; substituted the final portion of the third sentence, beginning with "order the county treasurer to remit," for "fix a basic special levy for high schools of such amount"; deleted from the first paragraph a final sentence prohibiting state equalization aid to high school districts levying less than 15 mills; and inserted "the county's portion of" before "the levy" near the beginning of the second paragraph.

75-6914. Apportionment of county equalization moneys by county superintendent. The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a quarterly basis. The apportionments shall be known as "county equalization moneys". Before the county superintendent makes the quarterly apportionments, he shall:

- (1) deduct from the revenues available in the basic county tax account the amount required for the quarter to pay the county's obligation for elementary transportation reimbursements; and
- (2) deduct from the revenues available in the basic special tax for high schools account the amount required for the quarter to pay the county's obligation for high school out-of-county tuition.

History: En. 75-6914 by Sec. 264, Ch. 5, L. 1971; amd. Sec. 19, Ch. 266, L. 1977.

amount required for" for "the amount required from" in subdivision (2); and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment substituted "the

75-6915. Formula for apportionment of county equalization moneys. After making such deductions prescribed in section 75-6914, the county superintendent shall apportion the remaining amount of moneys available in the basic county tax account to the several public elementary districts of the county and in the basic special tax for high schools account to the several public secondary districts of the county in proportion to their needs under the foundation program in accordance with the following procedure:

(1) Determine the percentage that the county equalization moneys available for the support of the foundation programs of the public elementary districts in the county is of the total amount of the foundation programs of all public elementary districts.

(2) Multiply the foundation program amount of each public elementary district by the percentage determined in subsection (1) above to determine the portion of the county equalization moneys available to each public elementary district.

The above procedure shall also be applied for public secondary districts.

No territory situated within a county shall be excluded from the apportionment of the county equalization moneys under this section solely because such territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year shall not be considered in the apportionment procedure prescribed in this section.

When the total amount of the available county moneys for apportionment under this section is greater than the amount of money to be apportioned under the apportionment procedure prescribed by this section, the excess amount of county moneys shall be retained by the county to be considered as financing during the ensuing school fiscal year under the requirements of subsection (5) of section 75-6912 or subsection (1) of section 75-6913.

The county equalization moneys apportioned under these procedures shall constitute the first source of revenue in calculating the financing of the public elementary and secondary district foundation program. The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes.

History: En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 137, and once by Ch. 255. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 137, Laws of 1973, inserted "public" before "elementary district" throughout the section; substituted "public secondary districts" for "high school districts" throughout the section; deleted headings dividing numbered paragraphs applicable to elementary schools and to high schools; deleted former paragraphs (1) to (5) applicable to elementary schools; redesignated former paragraphs (6) and (7) as (1) and (2); made newly redesignated paragraphs (1) and (2) applicable to elementary districts by substituting "public elementary district" for "high school district" throughout the paragraphs; inserted a new paragraph immediately

after the numbered paragraphs; deleted "shall constitute the second source of revenue in calculating the financing of the elementary district foundation program and" before "shall constitute the first source of revenue" in the first sentence of the final paragraph; and inserted "elementary and" before "secondary district foundation program" at the end of the first sentence of the final paragraph.

Chapter 255, Laws of 1973, deleted from what is now the second paragraph after the numbered subdivisions a first sentence reading: "No district shall be deprived of its needful share of the county moneys apportioned under this section by reason of it being nonaccredited"; and made minor changes in phraseology.

Distribution Nondiscriminatory

Provisions of foundation program dealing with distribution of state education funds on a per-student basis, with smaller schools receiving somewhat more per student than larger schools, is rational and does not discriminate against taxpayers of any single county. State ex rel. Woodahl v. Straub, 164 M 141, 520 P 2d 776, certiorari denied 419 US 845, 42 L Ed 2d 73, 95 S Ct 79.

75-6916. Definition of and revenue for state equalization aid. The following shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state:

(1) 25% of all moneys received from the collection of income taxes under chapter 49 of Title 84, R.C.M. 1947,

(2) 25% of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R.C.M. 1947, as provided by section 84-1901, R.C.M. 1947,

(3) 10% of the moneys received from the collection of the severance tax on coal under chapter 13 of Title 84, R.C.M. 1947,

(4) 62½% of the moneys received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended,

(5) interest and income moneys described in sections 75-6907 and 75-6908, R.C.M. 1947,

(6) income from the local impact and education trust fund account, and

(7) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to sections 75-6912 and 75-6913 shall be paid into the same earmarked revenue fund.

As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program.

History: En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977.

Amendments

Chapter 137, Laws of 1973, set off in numbered paragraphs the items to be paid into the fund; inserted the provisions of paragraph (5); and made minor changes in phraseology.

Chapter 355, Laws of 1973, inserted the provision designated as paragraph (7).

The 1975 amendment inserted the provisions of paragraphs (3) and (6) and changed the numbering of the remaining paragraphs accordingly.

The 1977 amendment substituted "62½%" for "one-half (½)" at the beginning of subdivision (4); inserted "and other mineral" in subdivision (4); substituted "federal Mineral Lands Leasing Act, as amended" at the end of subdivision (4) for "Act of Congress of February 25, 1920"; and made minor changes in punctuation and style.

75-6917. Purpose of state equalization aid and duties of the board of public education for distribution. Except as provided in 75-6917.1, the moneys available for state equalization aid shall be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any and all costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings, new grounds, and transportation.

The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(1) and (2) * * * [Same as parent volume.]

(3) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to such aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education

shall not increase or decrease the state equalization aid distribution to any district on account of any difference which may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

Should a district receive more state equalization aid than it is entitled to, the county treasurer must return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the municipal division of the department of community affairs.

History: En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975.

Amendments

Chapter 166, Laws of 1973, corrected the name of the board of public education throughout the section; and deleted "in the months of December and April of each school fiscal year," from the beginning of subdivision (3).

Chapter 345, Laws of 1973, deleted "kindergarten" following "adult education program" near the end of the first paragraph.

Chapter 346, Laws of 1973, added the last paragraph.

The 1974 amendment inserted "Except as provided in 75-6917.1," at the beginning of the section; and made minor changes in style and punctuation.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" at the end of the last paragraph.

75-6917.1. Distribution of excess state equalization moneys. Moneys appropriated for foundation program purposes are exempt from the provisions of section 82-109(b), R. C. M. 1947. Moneys appropriated for foundation program purposes shall be expended to as great an extent as possible, irrespective of the availability of foundation program revenues from other sources. Any unencumbered funds remaining in the public school equalization earmarked revenue account at the end of the fiscal year shall be transferred to the state permissive school levies earmarked revenue account for the purpose of reducing the state-wide levy for public school permissive levy deficiency requirements.

History: En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974.

state-wide permissive levy deficiency levy; and providing an effective date.

Title of Act

An act amending section 75-6917, R. C. M. 1947, to transfer unexpended public school equalization moneys to the permissive levy deficiency fund to reduce the

Effective Date

Section 3 of Ch. 55, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved February 27, 1974.

75-6918. Duties of the superintendent of public instruction for state equalization aid distribution. The superintendent of public instruction shall administer the distribution of the state equalization aid by:

- (1). * * * [Same as parent volume.]
- (2) recommending to the board of public education the annual entitlement of all districts to state equalization aid to enable the board of public education to order the distribution of state equalization aid;
- (3) distributing by state warrant the state equalization aid for each district entitled to such aid, to the county treasurer of the county where the district is located, in accordance with the distribution ordered by the board of public education;
- (4). * * * [Same as parent volume.]

(5) reporting to the board of public education the estimated amount which will be available for state equalization aid; and

(6). * * * [Same as parent volume.]

History: En. 75-6918 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board throughout the

section; and deleted "at its meeting in July and December of each year" and "for the next succeeding six month period, commencing on July 1 and January 1" from subsection (5).

75-6921. Additional state levy for state deficiency. If the estimated state equalization level made under the provisions of section 75-6920 is less than one hundred per cent (100%), it shall be the duty of the director of the department of revenue to levy, separately for the elementary districts and the high school districts, additional taxes in such number of mills on the taxable value of all taxable property within the state as shall be required to complete the financing of the foundation programs of all elementary districts or all high school districts of the state.

The state treasurer shall keep a separate accounting of the proceeds realized from these mill levies. The superintendent of public instruction shall apportion the proceeds of the mill levies to the elementary districts of the state or the high school districts of the state, whichever the case may be, on the following basis:

(1) Determine the total amount required from this source of revenue by the several elementary or high school districts of the state.

(2) to (4). * * * [Same as parent volume.]

When the total amount of the proceeds realized from these mill levies is greater than the requirements of all the elementary districts or high school districts of the state, whichever the case may be, the excess amount of moneys shall be retained by the state for reduction of the ensuing year's additional state levy for elementary schools or high schools or, if there is no additional state levy under this section the excess may be transferred to the state equalization aid account for the reduction of the legislative appropriation.

The apportionment of state moneys under this section shall be known as the "additional state levy for state deficiency" and it shall be the last source of revenue in calculating the financing of the elementary district foundation program and the high school district foundation program.

The superintendent of public instruction shall compute the budgeted requirement for this source of revenue for each district and shall supply the total state requirements for the elementary district foundation programs and the high school district foundation programs to the director of the department of revenue on the second Monday of August.

History: En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973.

Amendments

The 1973 amendment substituted references to the state, the director of the department of revenue, the state treasurer and the superintendent of public instruction, respectively, throughout the section

for references to the county, the county commissioners, the county treasurer and the county superintendent; deleted "As provided in section 75-6805" from the beginning of the second paragraph; added to the first paragraph after the numbered clauses the final clause, beginning with "or, if there is no additional state levy"; deleted "and for the county" after "source

of revenue for each district" in the final paragraph; substituted "total state requirements" for "county requirements" in the

final paragraph; and deleted "in accordance with section 75-6717" from the end of the section.

75-6922. Permissive amount and permissive levy. (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedule in section 75-6905, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount," and it shall be financed by a levy on the taxable value of all taxable property within the district as prescribed in section 75-6926, supplemented with revenue from a levy on all the taxable property in the state.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding nine (9) mills on all the taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by nine (9) or by using the number of mills which would fund the permissive amount, whichever is less.

If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding six (6) mills on all taxable property in the district for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by six (6) or by using the number of mills which would fund the permissive amount, whichever is less.

If the amount of revenue raised by this levy is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the earmarked revenue fund, permissive levy account, according to the provisions of subsection (3) of this section.

(3) The director of the department of revenue shall annually set a levy on all the property of the state which will produce enough revenue to fund the permissive levy deficiency of the elementary and high school districts of the state. The proceeds of this levy shall be deposited to the earmarked revenue fund, permissive levy account, and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

Such distribution shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equaliza-

tion aid is made after January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the revenue collected is not sufficient to finance the deficiencies of the districts, as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the permissive levy account shall be used to reduce the state levy required for the next succeeding fiscal year. Interest earned on investment of permissive levy funds shall be deposited to the earmarked revenue fund, permissive levy account, for distribution during the next succeeding fiscal year.

History: En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973; amd. Sec. 1, Ch. 212, L. 1975.

Amendments

The 1973 amendment designated the former section as subsection (1); added "supplemented with revenue from a levy on all of the taxable property in the state" at the end of subsection (1); and added subsections (2) and (3).

The 1975 amendment revised the caption of the section which read: "Permissive levy"; substituted "Such excess above the foundation program amount shall be known as the 'permissive amount'" for "The financing of such general fund budget amount shall be known as the 'permissive levy'" at the beginning of the second sentence in subsection (1); substituted "permissive amount" for "permissive levy requirements" in the first sentence of subdivision (2)(a); inserted

the second sentence in the first paragraph of subdivision (2)(a); substituted "to fund the permissive amount in full" for "to fully fund the district's permissive levy requirements" in the second paragraph of subdivision (2)(a); substituted "permissive amount" for "permissive levy requirements" in the first sentence of subdivision (2)(b); inserted the second sentence in the first paragraph of subdivision (2)(b); substituted "to fund the permissive amount in full" for "to fully fund the district's permissive levy requirements in the second paragraph of subdivision (2)(b); rewrote the fourth sentence of the last paragraph which read: "If sufficient revenue is not collected to completely cover the permissive levy requirements of the districts, each district will receive the same percentage of its total requirement"; and made minor changes in style.

75-6923. Additional levy for general fund and election for authorization to impose. The trustees of any district may propose to adopt a general fund budget in excess of the general fund budget amount for such district as established by the schedule in section 75-6905 for any of the following purposes:

- (1) building, altering, repairing or enlarging any school house of the district;
- (2) furnishing additional school facilities for the district;
- (3) acquisition of land for the district;
- (4) proper maintenance and operation of the school programs of the district.

However, when the trustees adopt a total general fund budget which exceeds one hundred ten per cent (110%) of the general fund budget for the preceding year, they shall file a notice of this increase with the superintendent of public instruction, setting forth the specific reasons for increasing the budget.

When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise such excess amount of general fund financing

to the electors who are qualified, under section 75-6410, to vote upon such proposition except that the Twin Bridges high school district may increase its general fund budget as established by section 75-6905, R. C. M. 1947, by the amount of tuition paid to the district the previous year under section 75-6319, R. C. M. 1947. Such special election shall be called and conducted in the manner prescribed by this title for school elections. The ballot for such election shall state the amount of money to be raised by additional property taxation, the approximate number of mills required to raise such money, and the purpose for which such money will be expended, and it shall be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in such number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the additional levy.

☐ AGAINST the additional levy."

If the election on any additional levy for the general fund is approved by a majority vote of those electors voting at such election, the proposition shall carry and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify the additional levy amount authorized by such a special election on the budget form that is submitted to the county superintendent and the county commissioners shall levy such number of mills on the taxable value of all taxable property within the district as prescribed in section 75-6926, as are required to raise the amount of such additional levy.

Authorization to levy an additional tax under the provisions of this section shall be effective for only one (1) school fiscal year and shall be authorized by a special election conducted before the first day of August of the school fiscal year for which it is effective. Only one such additional levy for the maintenance and operation of the school programs of a high school district may be imposed by a high school district in a given school fiscal year.

History: En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974; amd. Sec. 1, Ch. 454, L. 1975.

Amendments

The 1973 amendment inserted two paragraphs which, as amended by chapters 230 and 346, Laws 1974, detailed the conditions under which the trustees could adopt a total general fund budget exceeding 112% of the general fund budget for the preceding year.

Chapter 214, Laws 1974 inserted the provision authorizing Twin Bridges High

School District to increase its general fund budget.

The 1975 amendment substituted the provisions of the paragraph following subdivision (4) for the two paragraphs inserted by the 1973 amendment.

Effective Dates

Section 2 of Ch. 214, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

Section 2 of Ch. 454, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 16, 1975.

75-6927. Proration and calculation of foundation program for a joint district. In joint districts, the foundation program shall be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the foundation program for which each county is obligated. The proration of the joint district foundation program shall be calculated as follows:

(1) to (3). * * * [Same as parent volume.]

The portion of a joint district foundation program for each county, as determined in subsection (3) of this section, shall be considered as a separate foundation program in such county for the purposes of calculating the various revenues for the foundation program. After the calculation of the foundation program revenues, the remainder of the general fund revenues shall be calculated in accordance with the provisions for general fund financing.

History: En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973.

Amendments

The 1973 amendment deleted from the final paragraph a second sentence reading:

"The interest and income moneys available to joint elementary districts shall be considered as prorated to the several counties on the basis of each child's county of residence."

CHAPTER 70—SCHOOL BUSES AND TRANSPORTATION OF PUPILS

Section

- 75-7001. Definitions.
- 75-7002. School bus definition and identification requirements.
- 75-7003. School bus driver qualifications.
- 75-7004. Duties of board of public education.
- 75-7005. Duties of the superintendent of public instruction.
- 75-7006. Penalty for violating law, board of education policies or superintendent of public instruction rules and regulations.
- 75-7008. Duty of trustees to provide transportation—types of transportation—bus riding time limitation.
- 75-7013. Bid letting for contract bus—payments under transportation contract.
- 75-7016. Determining residence.
- 75-7017. Determination of mileage distances.
- 75-7018. Schedule of maximum reimbursement by bus mileage rates.
- 75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.
- 75-7024. Bus depreciation reserve.

75-7001. Definitions. As used in this title, unless the context clearly indicates otherwise:

"Transportation" shall mean:

(1) a district's conveyance of a pupil by a school bus between his legal residence and the school designated by the trustees for his attendance;

(2) a district's conveyance of a pupil by a school bus between his regular school of attendance and the vocational-technical secondary schools designated by the trustees for his attendance if the secondary school is located in some other school district; or

(3) "individual transportation" whereby a district is relieved of actually conveying a pupil. Such individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

An "eligible transportee" shall mean a public school pupil who:

(1) is not less than five (5) years of age nor has attained his twenty-first (21st) birthday;

(2) to (4) * * * [Same as parent volume.]

History: En. 75-7001 by Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974; amd. Sec. 3, Ch. 371, L. 1975.

minimum age of an "eligible transportee" from six to five years.

The 1975 amendment inserted the provisions of paragraph (2) in the definition of "transportation" and redesignated former paragraph (2) as (3).

Amendments

The 1974 amendment lowered the mini-

75-7002. School bus definition and identification requirements. A "school bus" shall mean any motor vehicle which is owned by a district or other public agency or by a carrier under contract with such a district or public agency, and which complies with the bus standards established by the board of public education as determined by the Montana highway patrol's semiannual inspection of school buses and the superintendent of public instruction. Such bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency. Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least eight (8) inches in height. When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

History: En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973.

the first sentence; and substituted "semi-annual inspection" for "annual inspection" near the end of the first sentence.

Amendments

The 1973 amendment substituted a reference to the board of public education for a reference to the board of education in

Cross-References

Highway patrol functions transferred, sec. 82A-1206.

75-7003. School bus driver qualifications. Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

(1) he is not less than 18 years of age;

(2) he is of good moral character;

(3) he is the holder of a chauffeur's license;

(4) he has filed with the district a satisfactory medical examination report signed by any physician licensed in the United States, or if acceptable to an insurance carrier, any licensed physician on a blank provided by the superintendent of public instruction;

(5) to (7) * * * [Same as parent volume.]

History: En. 75-7003 by Sec. 280, Ch. 5, L. 1971; amd. Sec. 1, Ch. 50, L. 1977; amd. Sec. 1, Ch. 151, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 50 and once by Ch. 151. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 50, Laws of 1977, substituted "any physician licensed in the United States, or if acceptable to an insurance carrier, any licensed physician" in subdivision (4) for "a licensed physician of the state of Montana"; and made a minor change in style.

Chapter 151, Laws of 1977, reduced the age requirement from 21 to 18 in subdivision (1).

75-7004. Duties of board of public education. The board of public education, by and with the advice of the chief of the Montana highway patrol and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the Motor Vehicle Code, to provide uniform standards and regulations for the design, construction and operation of school buses in the state of Montana. Such policies shall:

(1) to (5). * * * [Same as parent volume.]

(6) prescribe any other policies for the operation of school buses which are not inconsistent with the Motor Vehicle Code, the minimum standards adopted by the national commission on safety education for school bus operation, the highway safety standards, and the transportation provisions of this title.

(7). * * * [Same as parent volume.]

The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title.

History: En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973.

Amendments

The 1973 amendment inserted "public" in the name of the board near the beginning of the preliminary paragraph and near the beginning of the final paragraph; deleted "the transportation programs that

are not inconsistent with" before "the transportation provisions" near the end of subdivision (6); and deleted from the final paragraph a first sentence reading, "The board of education shall promulgate a schedule that establishes the basis for increasing the individual transportation rates due to isolation as provided in subsection (3) of section 75-7019.

75-7005. Duties of the superintendent of public instruction. In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules, regulations, and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) and (3). * * * [Same as parent volume.]

(4) prescribe rules and regulations for the approval of individual transportation contracts, including the increases of the schedule rates due to isolation under the policy of the board of public education; and provide a degree of isolation chart to school district trustees to serve as a guide;

(5) to (7). * * * [Same as parent volume.]

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

History: En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973.

Amendments

The 1973 amendment inserted "public"

in the name of the board in subdivisions (1), (4) and (8); and added "and provide a degree of isolation chart to school district trustees to serve as a guide" to the end of subdivision (4).

75-7006. Penalty for violating law, board of education policies or superintendent of public instruction rules and regulations. Every district, its trustees and employees, and every person under a transportation con-

tract with a district shall be subject to the policies prescribed by the board of public education and the rules and regulations prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under sections 75-7022 and 75-7023 for bus miles actually traveled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.

When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay him for any bus miles traveled during the contract year in violation of such law or policies. Upon discovering such a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within ten (10) days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that such violation jeopardizes the safety of pupils.

History: En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974.

sanctions for operating a school bus in violation of transportation law or policies.

Amendments

The 1974 amendment substituted "board of public education" for "board of education" in the first sentence and revised the

Effective Date

Section 2 of Ch. 78, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 4, 1974.

75-7008. Duty of trustees to provide transportation—types of transportation—bus riding time limitation. The trustees of any district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for any eligible transportee, the trustees must provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and such direction is upheld by the superintendent of public instruction. The tendering of a contract to the parent or guardian whereby the district would pay the parent or guardian for individually transporting the pupil or pupils shall fulfill the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may, at his discretion, provide transportation or arrange for transportation for his child at his own expense to any district willing to accept his child.

The type of transportation provided by a district may be:

(1) and (2). * * * [Same as parent volume.]

When the parent or guardian of an elementary pupil consents to a trip of over one (1) hour, the trustees may require such eligible transportee to ride a school bus for more than one (1) hour per trip.

History: En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973.

Effective Date

Section 2 of Ch. 245, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 9, 1973.

Amendments

The 1973 amendment inserted the fourth sentence in the first paragraph.

75-7013. Bid letting for contract bus—payments under transportation contract. Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(1) secure bids by publishing at least three (3) calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county during a period of twenty-one (21) days. The trustees shall let the contract to the lowest responsible bidder and the trustees shall have the right to reject any and all bids; or

(2) negotiate a new contract with the current school bus contractor provided the negotiated contract costs do not exceed by more than five per cent (5%) per year the basic costs of the previous year's contract and provided the duration of the negotiated contract is no longer than the duration of the previous contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least one week prior to the meeting.

The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of section 75-6808.

The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(1) to (3). * * * [Same as parent volume.]

History: En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973.

matter as the first paragraph (2); and made minor changes in style.

Amendments

The 1973 amendment divided the first two sentences of the former first paragraph into the preliminary paragraph and its subsidiary paragraph (1); inserted new

Effective Date

Section 2 of Ch. 362, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 19, 1973.

75-7016. Determining residence. When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence shall be established on the basis of the general state residence law as provided in 83-303. Whenever any district or county is determined to be responsible for paying tuition for any pupil in accordance with 75-6313, 75-6314, or 75-6316, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.

History: En. 75-7016 by Sec. 293, Ch. 5, L. 1971; amd. Sec. 20, Ch. 266, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and style.

75-7017. Determination of mileage distances. When the mileage distance that transportation services are to be provided is a matter of con-

troversty and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and end 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that the route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

History: En. 75-7017 by Sec. 294, Ch. 5, L. 1971; amd. Sec. 21, Ch. 266, L. 1977.

tance" for "district" in the first sentence; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "dis-

75-7018. Schedule of maximum reimbursement by bus mileage rates.

(1) The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of 75-7022 and 75-7023. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. Any vehicle, the operation of which is reimbursed under the rate provisions of this schedule, shall be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees boarding such school bus on an approved route is not less than 75% of its rated capacity:

(a) 40 cents in fiscal 1978 and 45 cents in fiscal 1979 and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 50 children; and

(b) when the rated capacity is more than 50 children, an additional 2 cents per bus mile for each additional child in the rated capacity in excess of 50 shall be added to a base rate of 40 cents in fiscal 1978 and 45 cents in fiscal 1979 and each year thereafter per bus mile.

(3) When the number of eligible transportees boarding a school bus on an approved route is less than 75% of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees boarding the school bus on such route;

(b) multiply the number determined in subsection (3)(a) by 25% and round-off to the nearest whole number;

(c) add the amount calculated in subsection (3)(b) to the number determined in subsection (3)(a) to determine the adjusted rated capacity for the bus; and

(d) use the adjusted rated capacity determined in subsection (3)(c) as the rated capacity of such bus to determine the rate per bus mile traveled from the rate schedule in subsection (2) above.

(4) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of public education.

History: En. 75-7018 by Sec. 295, Ch. 5, L. 1971; amd. Sec. 1, Ch. 469, L. 1975; amd. Sec. 22, Ch. 266, L. 1977; amd. Sec. 1, Ch. 529, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 266 and once by Ch. 529. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1975 amendment deleted two subdivisions in subsection (1) which provided the rates per mile for buses with rated capacities for 6 children or less and for not less than 7 but not more than 11 chil-

dren; increased the rates specified in subdivisions (1)(a) and (1)(b) from \$.20 and \$.005 to \$.35 and \$.02, respectively; and substituted 50 children for 30 children in the references to the rating capacities in subdivisions (1)(a) and (1)(b).

Chapter 266, Laws of 1977, designated the first paragraph as subsection (1), renumbered the subdivisions accordingly, and designated the last paragraph as subsection (4); inserted "public" near the end of subsection (4); and made minor changes in phraseology, punctuation and style.

Chapter 529, Laws of 1977, substituted "\$.40 in fiscal 1978 and \$.45 in fiscal 1979 and each year thereafter" in subdivisions (2)(a) and (2)(b) for "thirty-five cents (\$.35)"; and made minor changes in style.

75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school, or to schools located within three (3) miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by two (2), subtracting six (6) miles from the product so obtained, and multiplying the difference by twelve cents (\$.12) provided that:

(a) if two (2) or more eligible transportees are transported by a par-

ent or guardian to two (2) or more schools located within three (3) miles of one another, and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts.

(b) if two or more eligible transportees are transported by a parent or guardian to two (2) or more schools located more than three (3) miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school.

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within three (3) miles of one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus.

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section shall be limited to one round trip per day for each scheduled arrival or departure time.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by two (2), subtracting three (3) miles from the product so obtained and multiplying the difference by twelve cents (\$.12) provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally, and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The increased rate shall be one and one-half ($1\frac{1}{2}$) times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be three dollars (\$3) for one eligible transportee and one dollar and fifty cents (\$1.50) for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study; provided that the course of instruction is approved by the trustees and supervised by the district.

(6) The schedules provided in this section shall not be altered by any authority other than the legislature of the state of Montana

History: En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973; amd. Sec. 1, Ch. 470, L. 1975; amd. Sec. 1, Ch. 534, L. 1977.

Amendments

Chapter 169, Laws of 1973, made changes in subsection (2) (see the provision in the parent volume), including the substitution of "an established bus route stop" for "such bus route" in the first sentence, insertion of "from the child's residence" following "distance" in the last sentence, and the addition of "from established bus stop" to the end of the last sentence.

Chapter 416, Laws of 1973, deleted "The board of education shall promulgate a schedule that allows varying" from the beginning of the fifth sentence of subsection (3) which, prior to the 1975 amendment, read: "The percentage in-

creases of the per-day individual transportation rate prescribed in subsection (1) and (2) in relation to the degree of isolation, except that such increases shall not exceed one hundred per cent (100%)."

The 1975 amendment rewrote subsections (1) and (2) (see the parent volume and above amendment notes); rewrote the last sentence of subsection (3) (See the above note covering the 1973 amendment by Chapter 416); revised the per diem rates specified in the last sentence of subsection (4) which provided for rates of \$1.50 for one eligible transportee, \$.60 for a second eligible transportee of the same household and \$.30 for each additional eligible transportee of the same household; and, in subsection (6), substituted "legislature" for "legislative assembly" and deleted "except as provided in subsection (3)" at the end.

The 1977 amendment inserted subdivision (1)(d).

75-7024. Bus depreciation reserve. (1) The trustees of any district owning a bus or a two-way radio used for purposes of transportation, as defined in 75-7001, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the replacement of such bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio for such purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for that district and a levy shall be made by the county commissioners in accordance with 75-6717.

(3) Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund

budget and the school financial administration provisions of this title and may be made only for the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 75-6410, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

History: En. 75-7024 by Sec. 301, Ch. 5, L. 1971; amd. Sec. 1, Ch. 194, L. 1977.

poses of transportation as defined in 75-7001, or for purposes of conveying pupils to and from school functions or activities" for "transportation purposes" in subsection (1); and made minor changes in phraseology and style.

Amendments

The 1977 amendment inserted the subsection designations; substituted "pur-

CHAPTER 71—SCHOOL DISTRICT AND COUNTY SCHOOL BONDS

Section

- 75-7102. Definition of school district for bonding purposes.
- 75-7103. Trustees may issue bonds for certain purposes.
- 75-7103.1. Trustees may enter into contracts and issue bonds for joint construction.
- 75-7103.2. Proportional joint ownership—disposition of moneys.
- 75-7104. Limitations on amount of bond issue.
- 75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds.
- 75-7116. Notice of bond election by separate purpose.
- 75-7119. Notice of sale of school district bonds.
- 75-7121. Sale of school district bonds.
- 75-7127. Preparation of debt service fund budget.
- 75-7129. Payment of debt service obligations by county treasurer and termination of interest.

75-7102. Definition of school district for bonding purposes. For the purposes of inebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" shall mean any elementary district, high school district, or community college district, except the following types of high schools recognized as high school districts without a bonding authority in section 75-6501:

(1) and (2). * * * [Same as parent volume.]

History: En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973.

Amendments

The 1973 amendment inserted references to community college districts twice in the preliminary paragraph.

75-7103. Trustees may issue bonds for certain purposes. The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(1) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for, a school, teacherage,

dormitory, gymnasium, other building, or combination of said buildings for school purposes including post-secondary vocational-technical centers in the school district;

(2) buying a school bus or buses;

(3) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(4) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(5) funding a judgment against the district.

Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the ninth grade of the high school is served thereby.

History: En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 76 and once by Ch. 189. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 76, Laws of 1973, inserted "purchasing lands for, and/or obtaining a

water supply for" and "or combination of said buildings" in subsection (1); deleted former subsections (2) and (3); renumbered former subsection (4) as (2) and added "or buses" to that subsection; and renumbered former subsections (5), (6) and (7) as (3), (4) and (5).

Chapter 189, Laws of 1973, inserted "including post-secondary vocational-technical centers" in subdivision (1).

Effective Date

Section 2 of Ch. 76, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

75-7103.1. Trustees may enter into contracts and issue bonds for joint construction. The trustees of a school district may enter into a contract with the trustees of any school district within the county, or with any school district in an adjoining county, to provide for the joint construction of vocational-technical secondary schools upon such terms and conditions as may be mutually agreed upon between such districts. The trustees of any district executing a contract in accordance with this act may levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

History: En. 75-7103.1 by Sec. 1, Ch. 371, L. 1975.

Title of Act

An act to permit school districts to contract with other school districts for

the purpose of constructing joint vocational-technical secondary schools; allowing school districts to provide transportation to secondary school if located in another district; and amending section 75-7001, R. C. M. 1947.

75-7103.2. Proportional joint ownership—disposition of moneys. The vocational-technical secondary school constructed under the preceding section [75-7103.1] shall be jointly owned by the school districts contributing to its construction in proportion to the contribution of each district. The

sale or other disposition of a district's interest in the school shall be made in accordance with section 75-8205. Moneys received from the sale or disposition of a district's interest in a vocational-technical secondary school shall be credited to the debt service fund, building fund, general fund or any combination of these three funds, at the discretion of the trustees.

History: En. 75-7103.2 by Sec. 2, Ch. 371, L. 1975.

75-7104. Limitations on amount of bond issue. (1) The maximum amount for which each school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 29% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The 29% maximum, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district. All bonds issued in excess of such amount shall be null and void, except as provided in this section.

(2) When the total indebtedness of a school district has reached the 29% limitation prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter. Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded are applied towards the payment of such bonds and the refunding bond issue is decreased accordingly.

(3) In a school district within which a new major industrial facility which seeks to qualify for taxation as class eighteen property under 84-301.19 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class eighteen property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 29% limitation prescribed in this section. Under such an agreement, the school district may with the approval of the voters issue bonds which exceed the limitation prescribed in this section by a maximum of 29% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed after this section.

(4) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class eighteen property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness

in excess of the limitation prescribed in this section. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(5) A major industrial facility is a facility subject to the taxing power of the school district whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977.

Amendments

Both 1973 amendments deleted from the first paragraph of subsection (1) a sentence defining the words "value of taxable property therein."

The 1974 amendment inserted the subsection designation (1); added "except as provided in subsection (2)" at the end of the first paragraph in subsection (1); and added subsection (2).

Chapter 56, Laws of 1975, increased the maximum allowable indebtedness for school districts from 5% to 7% of the assessed value of taxable property.

Chapter 432, Laws of 1975, increased the allowable indebtedness from 5% to

7% and inserted the exclusion in the first paragraph of subsection (1) relating to special improvement district obligations.

The 1977 amendments changed the maximum allowable indebtedness from 8% of the assessed value of the taxable property to 29% of the taxable value of the property subject to taxation; designated the second and third paragraphs of former subsection (1) as subsection (2); redesignated former subsection (2) as subsections (3) through (5); substituted "class eighteen property" throughout the section for "class seven property"; substituted "84-301.19" in the first sentence of subsection (3) for "84-301"; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 56, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 17, 1975.

75-7107. Limitation of term and interest on bonds, and timing for redemption of bonds. School district bonds shall not be issued for a term longer than twenty (20) years except that bonds issued to refund or redeem outstanding bonds shall not be issued for a term longer than ten (10) years unless the unexpired term of the bonds to be refunded or redeemed is in excess of ten (10) years in which case the refunding or redeeming bonds may be issued for such unexpired term. All bonds issued for a longer term than five (5) years shall be redeemable at the option of the school district on any interest payment date after one-half ($\frac{1}{2}$) of the term for which they were issued has expired and it shall be so stated on the face of the bonds. The interest shall not exceed seven per cent (7%) per annum and shall be payable semiannually.

History: En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973.

Amendments

The 1973 amendment substituted "after

one-half ($\frac{1}{2}$) of the term for which they were issued has expired" in the second sentence for "five (5) years from the date of issue"; and made minor changes in phraseology.

75-7116. Notice of bond election by separate purpose. Any school district bond election shall be conducted in accordance with the school election provisions of this Title except that the election notice required therein shall be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. _____ of _____ County, state of Montana, that pursuant to a certain resolution duly adopted at a meeting of the board of trustees of said school district held on the _____ day of _____, A.D., 19_____, an election of the registered electors of School District No. _____ of _____ County, state of Montana, will be held on the _____ day of _____, A.D., 19_____, at _____ for the purpose of voting upon the question of whether or not the trustees shall be authorized to issue and sell bonds of said school district in the amount of _____ dollars (\$_____), bearing interest at a rate not more than seven per cent (7%) per annum, payable semiannually, for the purpose of _____ (here state purpose). The bonds to be issued will be either amortization or serial bonds, and amortization bonds will be the first choice of the board of trustees. The bonds to be issued, whether amortization or serial bonds, will be payable in installments over a period not exceeding _____ (state number) years.

The polls will be open from _____ o'clock _____m. and until _____ o'clock _____m. of the said day.

Dated and posted this _____ day of _____, A.D., 19_____.

Chairman of School District No.
_____ of _____ County,
State of Montana

If the bonds proposed to be issued are for more than one purpose, then each purpose shall be separately stated in the notice together with the proposed amount of bonds therefor.

History: En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973.

Amendments

The 1973 amendment deleted "who are taxpayers therein and whose names appear

on the last completed assessment roll for state, county and school district taxes prior to the holding of such election," from the notice following "registered electors of School District No. _____ of _____ County, state of Montana."

75-7119. Notice of sale of school district bonds. The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued, and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. _____ of _____ County, state of Montana, that the trustees will on the _____ day of _____, 19_____, at the hour of _____ o'clock _____m. at _____, in the school district, sell to the highest and best bidder for cash, either amortiza-

tion or serial bonds of the school district in the total amount of dollars (\$.....), for the purpose of

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of years from the date of issue.

If serial bonds are issued and sold they will be in the amount of dollars (\$.....) each, the sum of dollars (\$.....) of the serial bonds will become payable on the day of, 19, and the sum of dollars (\$.....) will become payable on the same day each year thereafter until all of the bonds are paid.

The bonds, whether amortization or serial bonds, will bear date of, 19, and will bear interest at a rate not exceeding 7% per annum, payable semiannually, on the day of (month) and (month) in each year, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, in the sum of dollars (\$.....) payable to the order of the district, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the bonds.

All bids should be addressed to the undersigned district.

.....
Chairman, School District No.

of County

Address:

ATTEST: Subscribed and sworn to before me this day of, 19 Notary Public for the State Residing at, Montana.
My Commission expires

History: En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971; amd. Sec. 23, Ch. 266, L. 1977.

perfluous ".... dollars (\$....)" in the fourth paragraph of the notice form; and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment deleted a su-

75-7121. Sale of school district bonds. (1) The trustees shall meet at the time and place fixed in the notice to consider bids on the bond

issue. The bonds shall be sold at not less than par and accrued interest and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have the preference over a bid for serial bonds, all other things being equal; and in considering bids on these classes of bonds, the trustees shall take into consideration not only the rate of interest demanded on each kind, but also every other known element affecting the total cost of the bonds to the district when paid in full. The trustees shall accept the bid which they shall judge most advantageous to the school district. No attorney fees, brokerage or other fees, or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings or in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the school district except that such bonds shall not be sold at less than par and accrued interest.

(2) The trustees may co-operate and combine with other school districts within the same county for the purpose of preparing and negotiating for sale of bond issues, if in the opinion of the trustees such co-operation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. Provided, however, that bond issues prepared or negotiated for sale under this section shall not be combined for any other purpose, but shall be entered separately on the books of the county treasurer and shall be otherwise treated as separate bond issues.

History: En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974.

Amendments

The 1974 amendment inserted subsection designation (1) and added subsection (2).

75-7127. Preparation of debt service fund budget. The trustees of each school district having outstanding bonds shall include in the debt service fund of the preliminary budget adopted in accordance with section 75-6707 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of such bonds and the redemption plans of the trustees. The trustees shall also include in the debt service fund of the preliminary budget the amount of money necessary to pay the special improvement district assessments levied against the school district which become due during the ensuing school fiscal year. The county superintendent shall compare the preliminary budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in his statement supplied under the provisions of section 75-6710. If the county superintendent finds that the requirement stated by the county treasurer is more than the preliminary budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the preliminary budget. The amount confirmed or revised by the county superintendent shall be the final budget expenditure amount for the debt service fund of such school district.

History: En. 75-7127 by Sec. 328, Ch. 5, L. 1971; amd. Sec. 2, Ch. 432, L. 1975.

Amendments

The 1975 amendment inserted the sec-

ond sentence and the clause in the third sentence pertaining to provision for special improvement district assessments.

75-7129. Payment of debt service obligations by county treasurer and termination of interest. The county treasurer shall maintain a separate debt service fund for each school district, and shall credit all tax moneys collected for debt service to such fund and use the moneys credited to such fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as such interest or principal becomes due when the coupons or bonds are presented and surrendered for payment, and shall pay all special improvement district assessments as the same become due. If the bonds are held by the state of Montana, then all payments shall be remitted to the state treasurer who shall cancel the coupons or bonds and return such coupons or bonds to the county treasurer with his receipt. If the bonds are not held by the state of Montana, and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to such bank or financial institution for payment against the surrender of the canceled coupons or bonds.

Whenever any school district bond, or installment on school district bonds, shall become due and payable, interest shall cease on such date unless sufficient funds are available to pay such bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on such bond or installment shall continue until payment is made.

Any installment on interest and principal on bonds held by the state, that is not promptly paid when due, shall draw interest at an annual rate of six per cent (6%) from the date due until actual payment, irrespective of the rate of interest on the bonds.

History: En. 75-7129 by Sec. 330, Ch. 5, L. 1971; amd. Sec. 3, Ch. 432, L. 1975.

of special improvement district assessments.

Amendments

The 1975 amendment inserted the clause at the end of the first sentence of the second paragraph pertaining to payment

Effective Date

Section 4 of Ch. 432, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 14, 1975.

CHAPTER 72—ELEMENTARY TUITION AND SPECIAL PURPOSE FUNDS

Section

75-7201. Elementary tuition rates.

75-7202. End of term tuition report and notification of resident elementary district.

75-7203. Budgeting, levy requirement and paying elementary tuition.

75-7204. Retirement fund.

75-7205. Purpose and authorization of a building reserve fund by an election.

75-7214. Housing and dormitory fund.

75-7201. Elementary tuition rates. Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of section 75-6313 or 75-6314, such district shall pay tuition to the elementary district where the pupil attends school on the basis of the rate of tuition determined by the attended district. The rate of tuition shall be determined by:

(1) totaling the actual expenditures from the district general fund, retirement fund and debt service fund;

(2) dividing the amount determined in subsection (1) above by the ANB of the district for the current fiscal year, as determined under the provisions of section 75-6902; and

(3) subtracting the total of the per ANB amount allowed by section 75-6905 that represents the foundation program as prescribed by section 75-6906 plus the per ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (2) above.

History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974.

to repeal the elementary school tuition schedule and to establish the annual calculation of a district's tuition rate on the basis of actual expenditures.

Amendment

The 1974 amendment rewrote this section

75-7202. End of term tuition report and notification of resident elementary district. At the close of the school term of each school fiscal year and before the fifteenth (15th) day of July, the trustees of each elementary district shall report to the county superintendent:

(1) * * * [Same as parent volume.]

(2) the number of days of school attended by each pupil;

(3) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, may waive. Any waiver of tuition shall be applied equally to all pupils; and

(4) the rate of the current school fiscal year tuition, as determined under the provisions of section 75-7201.

When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the county superintendent of each county in which the reported pupils reside. In turn, every county superintendent shall notify each elementary district of his county of the tuition amounts owed to other elementary districts of the county or outside of the county. Such amounts shall be established from the tuition rate and other information reported by the district in which the pupil attended school. No tuition shall be due when a pupil attends less than forty (40) days of school in such district.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974.

rate and other information reported" for "from the tuition rate stated in each pupil's tuition agreement and from the information reported" in the next to last sentence in the final paragraph.

Amendments

The 1974 amendment inserted subdivision (4) and substituted "from the tuition

75-7203. Budgeting, levy requirement and paying elementary tuition. The tuition amount that has been established in 75-7201 shall be paid

during the ensuing school fiscal year. The trustees of the elementary district shall include such amount in the tuition fund of the preliminary budget. If the trustees should fail to include such amount or any portion of it in the preliminary budget, they shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. Such adjustment shall not be subject to the budget adjustment provisions of 75-6714.

The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 75-6717. Such levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget, the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated moneys that may be realized in the tuition fund.

The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of 75-7201. Such payments shall be made whenever there is a sufficient amount of cash available in the tuition fund, but no later than the end of the school fiscal year for which the budget was adopted.

History: En. 75-7203 by Sec. 342, Ch. 5, L. 1971; amd. Sec. 15, Ch. 277, L. 1977.

paragraph; and made minor changes in style.

Amendments

The 1977 amendment substituted "they shall adjust" for "the budget board shall adjust" in the third sentence of the first

Repealing Clause

Section 16 of Ch. 277, Laws 1977, read "Sections 75-6703, 75-6715, and 75-6728, R. C. M. 1947, are repealed."

75-7204. Retirement fund. The trustees of any district employing personnel who are members of the teachers retirement system or the public employees retirement system, or who are covered by unemployment compensation, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers retirement system shall be calculated in accordance with section 75-6207. The district's contribution for each employee who is a member of the public employees retirement system shall be calculated in accordance with 68-2504. The district may levy a special tax to pay its contribution to the public employees retirement system under the conditions prescribed in 68-1704. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment compensation shall be paid in accordance with section 87-109.

The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the

retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(1) and (2) * * * [Same as parent volume.]

The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds. The county commissioners shall fix and set such county levy in accordance with section 75-6717.

The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in section 75-6721.

History: En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977.

Amendments

The 1973 amendment inserted "or who are covered by any federal social security system requiring employer contributions" in the first sentence of the first paragraph; added the fourth sentence to the first paragraph; deleted, immediately after paragraph (2), a paragraph providing for annual report to and levy by the county commissioners of elementary district requirements; inserted "separately for all elementary school districts" in the first sentence of the next to last paragraph; substituted "joint district" for "joint high school district" before "levy requirements" in the same sentence; inserted "for elementary district and" near the end of the same sentence; inserted "a joint elemen-

tary district or" before "a joint high school district" near the beginning of the final paragraph; substituted "district ANB of the joint district" in the final paragraph for "high school ANB of the joint high school district"; and made minor changes in phraseology.

The 1975 amendment inserted the clause in the first sentence of the first paragraph and added the final sentence of that paragraph pertaining to contributions for employees covered by unemployment compensation.

The 1977 amendment substituted "68-2504" for a reference to 68-603 at the end of the third sentence of the first paragraph; inserted the fourth sentence of the first paragraph; inserted references to community college districts in two places in the first sentence of the fourth paragraph; and made minor changes in phraseology, punctuation and style.

75-7205. Purpose and authorization of a building reserve fund by an election. The trustees of any district, with the approval of the qualified electors of the district, may establish a building reserve for the purpose of raising money for the future construction, equipping or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(1) to (4) * * * [Same as parent volume.]

The total amount of building reserve when added to the outstanding indebtedness of the district shall not be more than five per cent (5%) of the value of the taxable property of the district. Such limitation shall be determined in the manner provided in section 75-7104. A building reserve tax authorization shall not be for more than twenty (20) years.

The election shall be conducted in accordance with the school election laws of this title and the electors qualified to vote in the election shall be qualified under the provisions of section 75-6410. The ballot for a building reserve proposition shall be substantially in the following form:

OFFICIAL BALLOT * * * [Same as parent volume.]

The building reserve proposition shall be approved if a majority of those electors voting at the election approve the establishment of or addition to such building reserve. The annual budgeting and taxation authority of the trustees for a building reserve shall be computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve shall lapse when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve shall be used for such purpose or purposes before any money realized by the bond issue is used.

History: En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971; amd. Sec. 1, Ch. 29, L. 1975.

other buildings" in the first sentence of the first paragraph.

Effective Date

Section 2 of Ch. 29, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 7, 1975.

Amendments

The 1975 amendment substituted "or for the purpose of purchasing land" for "or

75-7214. Housing and dormitory fund. (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of 75-8211 may establish a housing and dormitory fund. All moneys received from such lease or rental agreements may be deposited with the county treasurer to the credit of the housing and dormitory fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a housing and dormitory fund is more than \$3,000, such cash balance in excess of \$3,000 shall be transferred to the general fund of the district.

(2) Any expenditure of moneys from a housing and dormitory fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

History: En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973; amd. Sec. 4, Ch. 424, L. 1977.

Amendments

The 1973 amendment inserted "or receives moneys under the provision of section 75-8211" in the first sentence of the first paragraph.

The 1977 amendment inserted the subsection designations; substituted "may" in the first two sentences of subsection (1) for "shall"; added "or any other appropriate fund" to the end of the second sentence of subsection (1); and made minor changes in phraseology and style.

CHAPTER 73—PUBLIC SCHOOL FUND, EDUCATIONAL CO-OPERATIVE AGREEMENTS AND GRANTS TO SCHOOLS

Section

75-7303. Acceptance and expenditure of federal moneys for state.

75-7309. Gifts, legacies, devises, and administration of endowment fund.

75-7303. Acceptance and expenditure of federal moneys for state. The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of Congress of the United States, or otherwise, for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury, and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government. All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time, but shall be continuously available to the superintendent of public instruction for expenditures consistent with this act and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973.

Compiler's Notes

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in *Board of Public Education v. Judge*, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Amendments

The 1973 amendment substituted "in the state treasury" for "with the state treasurer" in the second sentence; inserted the fourth, fifth and sixth sentences; inserted "of moneys from federal sources under this section" near the beginning of the seventh sentence; and made minor changes in phraseology.

75-7309. Gifts, legacies, devises, and administration of endowment fund.

(1) The trustees of any district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, deviser, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit such gift, legacy, devise, or the proceeds therefrom in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund shall be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund shall be invested by the trustees, notwithstanding the provisions of any other state law, in:

- (a) school district bonds of the district;
- (b) bonds of other school districts within the state;
- (c) first mortgage bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;
- (d) certificates of deposit of Montana banks insured by the federal deposit insurance corporation; or
- (e) direct obligations of the United States government.

(3) All interest collected on the deposits or investments shall be credited to the endowment fund. No portion of the endowment fund may be loaned to the district nor may any money of the fund be invested in warrants of the district.

(4) Whenever any district has been abandoned, the endowment fund of the abandoned district shall be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on his official bond for the endowment fund of any district of the county. No later than July 1 each school fiscal year, the county treasurer shall account to the trustees of each district on the condition of its endowment fund including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in his reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district which become a part of the endowment fund.

History: En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971; amd. Sec. 24, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted the sub-

section designations; redesignated former subdivisions (1) through (5) as subdivisions (2)(a) through (2)(e); and made minor changes in phraseology, punctuation and style.

CHAPTER 74—SCHOOL TERMS AND HOLIDAYS

Section

75-7402. School fiscal year.

75-7403. School day and week.

75-7403.1. Religious instruction released time program.

75-7406. School holidays.

75-7402. School fiscal year. The school fiscal year shall begin on the first day of July and end on the last day of June. At least one hundred eighty (180) school days of pupil instruction shall be conducted during each school fiscal year, unless a variance for kindergarten has been granted under section 75-7403. Any district that fails to provide for at least one hundred eighty (180) school days of pupil instruction shall not be entitled to receive any apportionment of the state interest and income funds. Any such forfeited moneys shall be apportioned by the county superintendent to the other elementary districts of his county.

History: En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974.

variance for kindergarten has been granted under section 75-7403" at the end of the second sentence.

Amendments

The 1974 amendment added "unless a

75-7403. School day and week. Subject to 75-7403.1, a school day of pupil instruction shall be at least two (2) hours for kindergartens and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education, at least four (4) hours for grades one (1) through three (3), and at least six (6) hours for grades four (4) through twelve (12). The number of hours in any one school day for grades four (4) through twelve (12) may be reduced by one (1) hour if the total number of hours in the school week is not less than thirty (30) hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education.

History: En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974; amd. Sec. 1, Ch. 130, L. 1977.

Amendments

The 1973 amendment inserted the second sentence; and substituted "week" for "day" in the third sentence.

The 1974 amendment inserted "unless

a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education" in the first sentence and substituted "board of public education" for "board of education" at the end of the third sentence.

The 1977 amendment inserted "Subject to 75-7403.1" at the beginning of the section.

75-7403.1. Religious instruction released time program. (1) The trustees of an elementary or high school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance for a period not to exceed 2 hours per week for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian.

(2) No religious instruction released time program may be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) No public moneys may be used, directly or indirectly, for such religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 75-6304, 75-6902, 75-7402, 75-7403, and all other provisions of Title 75, and such release may not adversely affect the pupil's attendance record.

History: En. 75-7403.1 by Sec. 2, Ch. 130, and high school districts to provide for a religious instruction released time program; amending section 75-7403, R. C. M. L. 1977.

Title of Act

An act to allow trustees of elementary

and high school districts to provide for a religious instruction released time program; amending section 75-7403, R. C. M. 1947.

75-7406. School holidays. Pupil instruction and pupil-instruction-released days shall not be conducted on the following holidays:

(1) to (4) * * * [Same as parent volume.]

(5) Thanksgiving day (fourth Thursday in November),

(6) Christmas day (December 25),

(7) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place. When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

History: En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974.

Amendments

The 1974 amendment deleted Veterans' Day as a school holiday.

CHAPTER 75—SCHOOL ACCREDITATION, CURRICULUM AND ADULT EDUCATION

Section

75-7502. Accreditation of schools.

75-7503.1. Instruction in public schools.

75-7507. Five-year-old schooling and preschool programs.

75-7511. State visual, aural and other educational media library.

75-7512. Definition of adult education and adult basic education.

75-7514.1. State policy for adult basic education.

75-7515.1. Adult basic education fund and its distribution.

75-7501. Standards of accreditation.

Cross-References

Board of public education to exercise

powers and duties of board of education, sec. 75-5617 (1).

75-7502. Accreditation of schools. Every school year the conditions under which each elementary school, middle school, junior high school, and high school operates shall be reviewed by the superintendent of public instruction to determine each school's compliance with the standards of accreditation. The accreditation status of every school shall then be established by the board of public education upon the recommendation of the superintendent of public instruction, and notification of such status for the applicable school year shall be given to each district.

History: En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974.

Amendments

The 1974 amendment inserted "middle

school" after "elementary school" in the first sentence and substituted "board of

public education" for "board of education" in the second sentence.

75-7503. Repealed.

Repeal.

Section 75-7503 (Sec. 373, Ch. 5, L. 1971), relating to instruction in elemen-

tary schools, was repealed by Sec. 4, Ch. 137, Laws 1975. For new law, see Sec. 75-7503.1.

75-7503.1. Instruction in public schools. The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

History: En. 75-7503.1 by Sec. 1, Ch. 137, L. 1975.

Title of Act

An act to authorize the board of public education to specify and define the basic instructional program in public schools; creating a new section 75-7503.1, R. C. M.

1947; amending sections 75-6303, R. C. M. 1947, relating to compulsory enrollment, and 75-8901, R. C. M. 1947, relating to instruction in drug education, and repealing sections 75-7503, 75-7504, 75-7509, and 75-8904, R. C. M. 1947, prescribing subjects of instruction in public schools.

75-7504. Repealed.

Repeal

Section 75-7504 (Sec. 375, Ch. 5, L. 1971), relating to instruction in middle schools,

junior high schools and high schools, was repealed by Sec. 4, Ch. 137, Laws 1975.

75-7507. Five-year-old schooling and preschool programs. (1) The trustees of an elementary district may establish a program capable of accommodating, at a minimum, all the children in the district who will be five (5) years old on or before the first grade enrollment closing date established by the district trustees for the school year for which the program is to be conducted. The program shall be an integral part of the elementary school and shall be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to section 75-6902, a child must have reached the age of five (5) on or before the first grade enrollment closing date established by the district trustees for the school year covered by the calculation.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of three (3) and five (5) years. When such preschool programs are established, they shall be an integral part of the elementary school and shall be governed accordingly. Financing of preschool programs shall not be supported by moneys available from state equalization aid.

History: En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973.

Amendments

The 1973 amendment inserted a new subsection (1); designated the language in the former section as subsection (2);

deleted references to kindergarten before the references to preschool programs in all three sentences of subsection (2); and reduced the maximum age specified at the end of the first sentence of subsection (2) from six to five years.

75-7509. Repealed.

Repeal

Section 75-7509 (Sec. 380, Ch. 5, L. 1971), relating to conservation education,

was repealed by Sec. 4, Ch. 137, Laws 1975.

75-7511. State visual, aural and other educational media library. A library of visual, aural and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction, on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state, and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in a media library revolving fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the library media revolving fund, for the operation, maintenance, enlargement and other related costs of the library.

History: En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974.

after "superintendent of public instruction" in the second sentence; deleted "either on a charge-free loan or" before "on a rental fee basis" in the second sentence; and added the third sentence.

Amendments

The 1974 amendment deleted "subject to the approval of the board of education"

75-7512. Definition of adult education and adult basic education. (1) As used in this title, unless the context clearly indicates otherwise:

(a) the term "adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation; and

(b) the term "adult basic education" means instruction in basic skills such as reading, writing, arithmetic, and other skills required to function in society offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state. Neither definition may include the instruction in postsecondary vocational-technical centers.

History: En. 75-7512 by Sec. 383, Ch. 5, L. 1971; amd. Sec. 2, Ch. 290, L. 1977.

inserted the definition for "adult basic education"; substituted "Neither" for "This" at the beginning of the last sentence of subdivision (1)(b); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment divided the section into subdivisions (1)(a) and (1)(b);

75-7514.1. State policy for adult basic education. Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

History: En. 75-7514.1 by Sec. 1, Ch. 290, L. 1977.

adult basic education, allowing a state fund administered by the superintendent of public instruction for its support; amending section 75-7512, R. C. M. 1947.

Title of Act

An act to establish a state policy for

75-7515.1. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school or community college district.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees of any district may apply to the superintendent for funds for its adult basic education courses. The financial administration and accounting of adult basic education funds shall be the same as that of adult education.

History: En. 75-7515.1 by Sec. 3, Ch. 290, L. 1977.

75-7517. School library required.

Cross-References	powers and duties of board of education,
Board of public education to exercise	sec. 75-5617 (1).

75-7520. Reporting school library information.

Cross-References	powers and duties of board of education,
Board of public education to exercise	sec. 75-5617 (1).

CHAPTER 76—TEXTBOOKS

Section	
75-7604.	Textbooks obtained from licensed textbook dealer.
75-7605.	Licensing textbook dealers.
75-7607.	Notification and processing of complaint against a licensed textbook dealer.

75-7604. Textbooks obtained from licensed textbook dealer. Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

History: En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973.	sentence requiring filing of copies in the textbook library maintained by the superintendent of public instruction.
---	---

Amendments

The 1973 amendment deleted a second

75-7605. Licensing textbook dealers. Textbook dealers shall be licensed to sell textbooks by the superintendent of public instruction. To obtain a license a textbook dealer shall first file with the superintendent of public instruction his written agreement:

(1) to guarantee that textbooks shall be supplied to any district at the listed, uniform sales prices in effect for schools; except, that such prices may be reduced in accordance with this section;

(2) to guarantee that, at no time, shall any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(3) to reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond shall run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond shall be set by the superintendent of public instruction and shall be not less than two thousand dollars (\$2,000) but not more than ten thousand dollars (\$10,000). The bond shall be approved by the attorney general. It shall be the responsibility of the textbook dealer to maintain the surety bond on a current basis.

When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

History: En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973.

Amendments

The 1973 amendment deleted former subdivision (1) requiring the filing of all

textbooks offered with the superintendent of public instruction; renumbered the succeeding subdivisions accordingly; and deleted "when the textbooks are filed" preceding the semicolon in subdivision (1).

75-7606. Repealed.

Repeal

Section 75-7606 (Sec. 398, Ch. 5, L. 1971), requiring licensed textbook dealers to file copies of books offered for sale

with the superintendent of public instruction, was repealed by Sec. 4, Ch. 89, Laws 1973.

75-7607. Notification and processing of complaint against a licensed textbook dealer. (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify his error within 30 days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account.

History: En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973; amd. Sec. 25, Ch. 266, L. 1977.

Amendments

The 1973 amendment substituted "without a license as prescribed in section 75-7605" for "not filed with the superintendent

ent of public instruction" in subdivision (1); deleted former subdivision (4), relating to books inferior to the sample filed with the superintendent; renumbered former subdivision (5) as (4); and made a minor change in style.

The 1977 amendment inserted the subsection designations; deleted former subdivision (1) reading "offering to supply textbooks without a license as prescribed

in section 75-7605"; redesignated former subdivisions (2) through (4) as subdivisions (1)(a) through (1)(c); and made minor changes in phraseology and punctuation.

Repealing Clause

Section 4 of Ch. 89, Laws 1973 read "Sections 75-7606 and 75-7611, R. C. M. 1947, are repealed."

75-7611. Repealed.

Repeal

Section 75-7611 (Sec. 403, Ch. 5, L. 1971), requiring the superintendent of public instruction to supply a list of text-

books on file with him to all district and county superintendents, was repealed by Sec. 4, Ch. 89, Laws 1973.

CHAPTER 77—VOCATIONAL AND TECHNICAL EDUCATION

Section

- 75-7709. Sources of financing for postsecondary vocational-technical center budgets—board of public education administration.
- 75-7716. Fire services training school—creation—allocation to the board of public education.
- 75-7717. Purpose of fire services training school.
- 75-7718. Fire services training advisory council.
- 75-7719. Organization of fire services training advisory council—procedures—compensation of members.
- 75-7720. Duties of the fire services training advisory council.
- 75-7721. Appointment of director of the fire services training school.
- 75-7722. Duties of fire services training school director.
- 75-7723. Acceptance of gifts, donations, and grants authorized.
- 75-7724. Cost recovery fee.
- 75-7725. Coordination with other agencies.

75-7701. Definitions.

Compiler's Notes

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board

of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

75-7702. Duties of board of education.

Compiler's Notes

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Executive Reorganization Order 5-72, signed by the governor and effective Sept. 15, 1972, established a vocational education advisory council for purposes of this chapter.

Cross-References

Board of public education to exercise

powers and duties of board of education, sec. 75-5617 (1).

Constitutionality

Amendment by Laws 1975, Ch. 434 designating state board of education as state board of vocational education contravened intent of Art. X, § 9 of 1972 Constitution, which intended vocational education to be responsibility of board of public education, and was unconstitutional; the act was unseverable and thus invalid in toto; appropriation to superintendent of public instruction remained operative. Board of Public Education v. Judge, — M —, 538 P 2d 11.

75-7703. Duties of superintendent of public instruction as executive officer.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board

of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

75-7704. District authorization to establish and maintain vocational education courses and programs.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board

of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

75-7706. State treasurer custodian of vocational education moneys.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board

of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

75-7707. Post-secondary vocational-technical center designation.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7708. Program and budget categories, etc.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7709. Sources of financing for postsecondary vocational-technical center budgets—board of public education administration. (1) The total of the budgets approved by the board of public education together with the budget for the cost of state administration of the postsecondary vocational-technical centers shall constitute the total maximum approved statewide budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing postsecondary vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated postsecondary vocational-technical center is located is hereby authorized to levy a tax of not to exceed 1 mill on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the postsecondary vocational-technical center located within the county.

(c) Designated postsecondary vocational-technical centers shall be eligible to receive such funds from the federal government as the board of public education may provide pursuant to applicable acts of congress.

(d) The board of trustees of any designated high school district or county high school district where a postsecondary vocational-technical center is located may be required, as to condition for the construction in that district of a postsecondary vocational-technical center, or any part thereof, to furnish up to 50% of the amount of funds required for any such construction. The percentage of construction funds to be furnished by the designated district shall be derived, in whole or in part, from any of the following sources:

(i) the sale of bonds issued by that district (such bonds shall be issued in conformity with the requirements of chapter 71 of Title 75 in the case of high school and county high school district);

(ii) any other funds available to that district which may be legally and properly applied toward such construction;

(iii) the reasonable value of land, buildings, fixtures, or equipment furnished by that district, subject to the approval of the board of public education.

(e) If the aggregate financing provided by sources of revenue in (1) (a), (1)(b), and (1)(c) of this section does not provide 100% financing of the maximum approved statewide budget, the remaining deficiency shall be financed from any state funds appropriated by the legislature for postsecondary vocational-technical education.

(2) The board of public education shall direct the distribution of the funds specified in subsections (1)(a), (1)(c), and (1)(e) of this section on the basis of the budgets approved by the board of public education. The funds earned by the mill levy specified in subsection (1)(b) of this section shall be credited by the county treasurer to the postsecondary vocational-technical center fund.

(3) The board of public education shall determine the amount of financing available from these five sources of revenue and may approve budgets for maintenance and operation, construction, and ancillary services. The aggregate amount of the budgets so approved by the board of public education for postsecondary vocational-technical centers shall not exceed the moneys determined to be available.

History: En. 75-7709 by Sec. 412, Ch. 5, L. 1971; amd. Sec. 1, Ch. 226, L. 1973; amd. Sec. 26, Ch. 266, L. 1977.

Compiler's Notes

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Amendments

The 1973 amendment inserted "public" in the name of the board throughout the section; inserted subdivision (4); renumbered former subdivision (4) as (5); in-

serted "in (1), (2) and (3)" in subdivision (5); substituted "five" for "four" before "sources of revenue" in the first sentence of the final paragraph; and made minor changes in phraseology.

The 1977 amendment inserted the subsection designations; redesignated former subdivisions (1) through (5) as subdivisions (1)(a) through (1)(e); substituted "vocational-technical center" for "vocational center" twice in the first sentence of subdivision (1)(d); redesignated former subdivisions (4)(a) through (4)(c) as subdivisions (1)(d)(i) through (1)(d)(iii); and made minor changes in phraseology, punctuation and style.

75-7710. Local administration.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7712. Admission of pupils with priority to Montana residents.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board

of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

75-7713. Waiver of tuition, etc.**Cross-References**

Board of public education to exercise

powers and duties of board of education, sec. 75-5617 (1).

75-7714. Pupil fees and disposition of collected fees.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7715. Lease or purchase of state property, etc.**Compiler's Notes**

Chapter 434, Laws 1975, amending this section, was declared unconstitutional by the supreme court of Montana in Board of Public Education v. Judge, — M —, 538 P 2d 11 and the chapter was repealed by Sec. 1, Ch. 4, Laws 1977.

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7716. Fire services training school—creation—allocation to the board of public education. There is a fire services training school. The fire services training school is allocated to the board of public education for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of public education. The general supervision of the school is vested in the board of public education.

History: En. 75-7716 by Sec. 1, Ch. 104, L. 1977.

Title of Act

An act creating a fire services training school.

75-7717. Purpose of fire services training school. The purpose of the fire services training school is to:

- (1) reduce the loss of life and personal injury caused by fire;
- (2) reduce property damage and loss caused by fire;
- (3) provide paid, volunteer, and other publicly or privately employed firefighters with professional training;

- (4) provide training in investigating the cause of fire;
- (5) develop new methods of fire prevention and firefighting;
- (6) provide expertise for testing firefighting methods and firefighting equipment;

(7) provide public educational programs to promote fire prevention.

History: En. 75-7717 by Sec. 2, Ch. 104,
L. 1977.

75-7718. Fire services training advisory council. (1) The board of public education shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

- (a) a fire chief;
- (b) a volunteer firefighter;
- (c) a paid firefighter;
- (d) a fire service instructor;
- (e) a person involved in fire prevention;
- (f) an engineering representative of the insurance services office;
- (g) a representative of the fire protection engineering industry;
- (h) a fire control officer recommended by the administrator of the division of forestry.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) of this section.

(3) Members appointed shall serve for a 4-year term. If a vacancy occurs, a member shall be appointed to fill the unexpired term. A member may be reappointed.

(4) The state fire marshal and director of the fire services training school are ex officio members of the council.

History: En. 75-7718 by Sec. 3, Ch. 104,
L. 1977.

75-7719. Organization of fire services training advisory council—procedures—compensation of members. (1) The members of the fire services advisory council shall elect a chairman, a vice-chairman, and such other officers considered advisable by the council. The terms of the officers shall be established by the council.

(2) The council shall adopt rules governing its procedures subject to approval of the board of public education.

(3) Members of the council shall receive compensation under 59-538, 59-539, and 59-801.

History: En. 75-7719 by Sec. 4, Ch. 104,
L. 1977.

75-7720. Duties of the fire services training advisory council. The fire services training advisory council shall advise the board and director of the fire services training school on planning, coordination, governance,

management, and control of the fire services training school to promote the purposes of the school.

History: En. 75-7720 by Sec. 5, Ch. 104,
L. 1977.

75-7721. Appointment of director of the fire services training school.

(1) The board of public education shall appoint the director of the fire services training school. The director is responsible to the board for carrying out the provisions of this act.

(2) The director may be removed for cause.

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer.

History: En. 75-7721 by Sec. 6, Ch. 104,
L. 1977.

75-7722. Duties of fire services training school director. The director shall appoint a staff and execute policies and programs established by the board of public education for the fire services training school. The director is responsible for the direction of staff and operation of the school.

History: En. 75-7722 by Sec. 7, Ch. 104,
L. 1977.

75-7723. Acceptance of gifts, donations, and grants authorized. The board of public education may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school.

History: En. 75-7723 by Sec. 8, Ch. 104,
L. 1977.

75-7724. Cost recovery fee. The board of public education may establish a cost recovery fee for training of commercially employed firefighters and such fees shall be deposited to the general fund.

History: En. 75-7724 by Sec. 9, Ch. 104,
L. 1977.

75-7725. Coordination with other agencies. The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of public education.

History: En. 75-7725 by Sec. 10, Ch. 104,
L. 1977.

CHAPTER 78—SPECIAL EDUCATION FOR EXCEPTIONAL CHILDREN

Section

75-7801. Definitions.

75-7802. Conduct of special education to comply with board of public education policies.

75-7803. Duties of superintendent of public instruction.

- 75-7804. Co-operation of state agencies.
- 75-7805. Establishment of special education program.
- 75-7806. Establishment of individual district special education program.
- 75-7807. Petition of parents for establishment of special education program.
- 75-7808. Arranging attendance in another district in lieu of a special education program.
- 75-7809. Out-of-state tuition for special education children.
- 75-7809.1. Arranging attendance in a private institution.
- 75-7810. No tuition when attending a state institution.
- 75-7811. Determination of need for special education by trustees and approval of classes and programs by superintendent of public instruction.
- 75-7813.1. Allowable cost schedule for special programs—the superintendent of public instruction to make rules—annual accounting.
- 75-7814. Special education child eligibility for transportation.
- 75-7816. Financial assistance for under-six year-old special education class or program.
- 75-7817. Regional special education services.

75-7801. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes but is not limited to speech pathology, audiology, occupational therapy, and physical therapy.

(2) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services.

(3) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(4) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of "deaf".

(5) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(7) "Other health-impaired" means limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(8) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual,

sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally disturbed category may include students who also may have been diagnosed by appropriate specialists as autistic, psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, mental retardation, or environmental, cultural, or economic disadvantages.

(10) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

(11) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

History: En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977.

not all, of the changes made by both amendments.

Amendments

The 1974 amendment substituted "kind" for "type" near the beginning of the definition of "special education"; added "or for educationally handicapped persons" at the end of the same definition; and added the definition of an "educationally handicapped person" at the end of the section.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 266 and once by Ch. 539. The code commissioner has made a composite section embodying some, but

Chapter 266, Laws of 1977, inserted subdivision designations; and made minor changes in phraseology, punctuation and style.

Chapter 539, Laws of 1977, rewrote the section. For prior version, see parent volume and 1974 amendment note.

75-7802. Conduct of special education to comply with board of public education policies. (1) The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies shall assure and include but are not limited to:

- (a) placement of handicapped children in the least restrictive alternative setting;
- (b) due process for all handicapped children;
- (c) use of child study teams to identify handicapped children and use of instructional teams to plan individual education programs;
- (d) comprehensive evaluation for each handicapped child; and
- (e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

History: En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977.

tion, teacher qualifications, distances of travel to classes or programs, necessary equipment and other special reasons"; added subsection (2); and made minor changes in phraseology.

Amendments

The 1977 amendment designated the former section as subsection (1); inserted "public" before "education" at the end of the first sentence of subsection (1); substituted subdivisions (1)(a) through (1)(e) for "regulation of class size, class grouping, curriculum, methods of instruc-

Cross-References

Board of public education to exercise powers and duties of board of education, sec. 75-5617 (1).

75-7803. Duties of superintendent of public instruction. The superintendent of public instruction shall supervise and co-ordinate the conduct of special education in the state by:

- (1) recommending to the board of public education for adoption of those policies necessary to establish a planned and co-ordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying handicapped children;
- (5) recommending to districts the type of special education class or program needed to serve the handicapped children of the districts and preparing appropriate guides for developing individual education programs;
- (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs

of children, in planning programs, and in admitting and discharging children from such programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all handicapped children;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers and trustees;

(10) conducting conferences, offering advice and otherwise co-operating with parents and other interested persons;

(11) acting as the co-ordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education; and

(12) administering regional special education services for children in need of special education in accordance with policies of the board of public education.

History: En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977.

Amendments

The 1975 amendment substituted "board of public education" for "board of education" in subsections (1), (2), (3) and (8); and added subsection (12) pertaining to regional special education services.

The 1977 amendment rewrote subdivi-

sions (4) through (7); deleted "established or" before "proposed" in subdivision (8); substituted "technical assistance to" in subdivision (9) for "supervision for and consulting with"; substituted "administering" at the beginning of subdivision (12) for "establishing"; and deleted the last sentence of subdivision (12) relating to appropriation and co-ordination of funding. For prior version, see parent volume and 1975 amendment note.

75-7804. Co-operation of state agencies. The state department of health, the department of institutions, the department of social and rehabilitation services, and the state school for the deaf and blind shall co-operate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies.

History: En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977.

Amendments

The 1977 amendment inserted "the department of social and rehabilitation services" in the first sentence; substituted "cooperate with" in the first sentence for

"assist"; inserted "in assisting school districts" in the first sentence; and deleted "in determining the type of special education for these children, and in generally supervising and co-ordinating special education in the state" at the end of the first sentence.

75-7805. Establishment of special education program. (1) All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children

who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. After September 1, 1977, the board of trustees of every school district must provide or establish and maintain a special educational program for every handicapped person as herein defined between the ages of 6 and 18, inclusive. After September 1, 1980, such services shall be provided for all handicapped children between the ages of 3 and 21, inclusive.

(2) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

History: En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977.

Amendments

The 1974 amendment inserted the subsection designation (1); substituted "program" for "class" throughout the first paragraph of subsection (1); added the second paragraph of subsection (1); and added subsections (2) and (3).

The 1977 amendment substituted the first three sentences of subsection (1) for a sentence providing that an applicable special education program be established in each case where there are at least ten educable mentally retarded children, seven trainable mentally retarded, and ten phys-

ically handicapped children; substituted "September 1, 1977" near the beginning of the fourth sentence of subsection (1) for "July 1, 1979"; substituted "between the ages of 6 and 18, inclusive" in the fourth sentence of subsection (1) for "between the ages of six (6) and twenty-one (21); deleted "in the district who cannot benefit sufficiently from the regular programs of instruction by reason of his mental, physical, emotional or learning problems" at the end of the fourth sentence of subsection (1); added the last sentence of subsection (1); and deleted former subsection (3) which provided that eligibility for special education programs be determined under regulations of the superintendent of public instruction.

75-7806. Establishment of individual district special education program. (1) The trustees of any district, upon obtaining the approval of the superintendent of public instruction, shall establish and maintain a special education program whenever, in the judgment of the trustees and the superintendent of public instruction:

(a) there are sufficient numbers of handicapped children in the district to justify the establishment of a program; or

(b) an individual child requires special education services such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Prior to September 1, 1980, programs may be established for handicapped children ages 3 through 5 and after September 1, 1980, children ages 0 through 2 may be provided service when the superintendent of public instruction and the trustees have determined that such programs will:

(a) assist a child to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the child with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the child.

(3) Prior to September 1, 1980, programs may be established for handicapped persons between the ages of 18 and 21 inclusive when the superintendent of public instruction and the trustees have determined that such programs will contribute to the educational development of those persons.

(4) When an agency which has responsibility for a handicapped person over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide such services.

History: En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977.

Amendments

The 1974 amendment deleted "special education class" before "or special education program" near the beginning of the

section; inserted subdivision (4) and re-numbered subsequent subdivisions accordingly; inserted "educationally handicapped children" in subdivisions (6) and (7); and added subdivision (8).

The 1977 amendment substituted the present section for one authorizing the trustees to establish special education programs in enumerated situations, but not requiring such programs.

75-7807. Petition of parents for establishment of special education program. The parents of persons requiring special education may petition the board of trustees to establish an individual district special education program. Parents residing in several districts may petition the board of trustees of each district to co-operatively establish a special education program. The interlocal co-operative agreement authorized in chapter 49 of Title 16, R.C.M. 1947, may be used to establish a multi-district special education program.

History: En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974; amd. Sec. 8, Ch. 539, L. 1977.

Amendments

The 1974 amendment substituted "persons requiring" for "children needing" at the beginning of the section; substituted "the kind provided for" near the beginning of the section for "one type of"; inserted "educationally handicapped persons" after "mentally retarded children" near the middle of the section; inserted "board of" before "trustees" throughout the section; deleted "class or" after "special education" at the end of the first sentence and throughout the remainder of the section; deleted "contiguous" before "districts" near the beginning of the second sen-

tence; substituted "kind" for "type" near the end of the second sentence; substituted "persons" for "children" as the last word of the second sentence; substituted "may" for "shall" in the last sentence; and made minor changes in punctuation and phraseology.

The 1977 amendment deleted "four (4) or more" before "persons" in the first sentence; deleted "of the kind provided for educable mentally retarded children, trainable mentally retarded children, educationally handicapped persons or physically handicapped children" before "may petition" in the first sentence; inserted "an individual district" in the first sentence; and deleted "of one kind for four (4) or more persons" after "program" at the end of the second sentence.

75-7808. Arranging attendance in another district in lieu of a special education program. With the approval of the superintendent of public instruction, the trustees may arrange for the attendance of a child in need of special education in a special education program in another district within the state of Montana. Arrangements for the attendance of a child in need

of special education are not subject to the laws governing the attendance of pupils in schools outside the district and no tuition shall be charged the district of residence. However, tuition as required under 75-6320 may be charged for children who are not considered full-time special education pupils as defined in 75-6902.

History: En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977.

Amendments

The 1975 amendment rewrote the caption of this section which read: "Providing tuition in lieu of a special education class or program"; substituted "special education program" for "special education

class or program" in the first sentence; and substituted the second sentence for provisions pertaining to approval or disapproval of attendance in accordance with the laws governing attendance of pupils in schools outside of the school district.

The 1977 amendment added the last sentence; and made minor changes in phraseology.

75-7809. Out-of-state tuition for special education children. If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, such arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of social and rehabilitation services and the department of institutions, to negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in section 75-7813.1(b)(iv)(A) in the maximum-budget-without-a-vote for special education.

History: En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977.

Amendments

The 1975 amendment substituted "special education program" for "special education class or program" in the first sentence; revised the section to delete provisions pertaining to approval or disapproval of attendance by the trustees, county superintendent for elementary classes or programs, and county superintendent for high school classes or programs; and substituted the last sentence of the second paragraph for a provision mak-

ing sections 75-7203 and 75-6317 applicable to payments of out-of-state tuition.

The 1977 amendment substituted "If the trustees of any district recommend to the superintendent of public instruction" at the beginning of the section for "The trustees of any district may arrange for"; substituted the first sentence of the second paragraph for "Whenever the attendance of a child at an out-of-state special education program is arranged, the board of trustees may negotiate the amount and manner of payment of tuition"; and made a minor change in punctuation.

75-7809.1. Arranging attendance in a private institution. Whenever the trustees determine that a handicapped child is in need of services that can only be provided by a private institution and the superintendent of public instruction so approves, the board of trustees may negotiate the amount and manner of payment of tuition and it shall be included as a contracted service as allowed in 75-7813.1(1)(b)(iv)(A).

History: En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977.

75-7810. No tuition when attending a state institution. When a child is attending an institution supported solely by funds of the state of Montana, the resident district or county shall not be required to pay tuition to the state institution for such child, but whenever at the recommendation of institution officials such child attends classes conducted by a school within a local district, the district or county, whichever is applicable, wherein the parents or guardian of the child maintain legal residence shall pay tuition to the district or county operating the school in accordance with the provisions of section 75-7201 or section 75-7808, whichever section applies to the circumstances of the child. Transportation payments shall be made for students enrolled in such classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments shall be approved in accordance with existing special education transportation payment schedules and shall be approved by the county transportation committee and the superintendent of public instruction.

History: En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973.

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 45 and once by Ch. 91. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

Amendments

Chapter 45, Laws of 1973, inserted "including summer sessions" in the second sentence.

Chapter 91, Laws of 1973, inserted "or county, whichever is applicable" in the first sentence.

75-7811. Determination of need for special education by trustees and approval of classes and programs by superintendent of public instruction. The determination of the children requiring special education and the type of special education needed by these children shall be the responsibility of the trustees, and such determination shall be made in compliance with the procedures established in the rules of the superintendent of public instruction. Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. No special education class may be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the maximum-budget-without-a-vote for special education.

History: En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977.

Amendments

The 1977 amendment changed the responsibility for the determination in the first sentence from the superintendent to the trustees and added the requirement

that the determination be made in compliance with the rules of the superintendent; inserted "and funding" in the second sentence; added "to be funded as part of the maximum-budget-without-a-vote for special education" to the last sentence; and made minor changes in phraseology.

75-7812. Repealed.

Repeal
 Section 75-7812 (Sec. 430, Ch. 5, L. 1971), relating to exclusion of children from special education classes or programs, was repealed by Sec. 16, Ch. 539, Laws 1977.

75-7813. Repealed.

Repeal
 Section 75-7813 (Sec. 431, Ch. 5, L. 1971), relating to financial assistance for operation of a special education class or program, was repealed by Sec. 2, Ch. 344, Laws 1974.

75-7813.1. Allowable cost schedule for special programs—the superintendent of public instruction to make rules—annual accounting. (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in sections 75-6905(20) and 75-6905(21), the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, “full-time special pupil” and “regular ANB” are to be determined in accordance with sections 75-6902 and 75-6903.

(a) Administration; salaries, benefits, supplies and other expenses of the superintendent's office, the office of the board of trustees, and the business office including:

(i) salaries of professional administrative personnel—a portion of the entire cost corresponding to the portion of entire working time which each such person devotes to the special program;

(ii) salaries of clerical personnel for administrative staff—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iii) supplies and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(b) Instruction; salaries, benefits, supplies, textbooks and other expenses including:

(i) salaries of principals and clerical personnel—a portion of the entire cost corresponding to the portion of the entire working time which each such person devotes to the special program but not to exceed one and seventy-five hundredths (1.75) times the amount budgeted per regular ANB for the current year;

(ii) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) teaching supplies and textbooks—if used exclusively for special programs the actual total cost. If shared with regular programs—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iv) other expenses—with the exception of the following items, the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year:

(A) Contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost.

(B) Transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes.

(c) Library services; salaries, books and periodicals and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(d) Supportive services; salaries, benefits and other expenses:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program.

Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(e) Operation of plant; salaries, benefits, heat for buildings, utilities except heating, and other supplies and expenses—the superintendent of public instruction shall make regulations fixing a ratio for operation spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(f) Maintenance of plant; salaries, benefits, replacements and parts, contracted services—the superintendent of public instruction shall make regulations fixing a ratio for maintenance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(g) School food services—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(h) Student body and auxiliary services; salaries and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(i) Other current charges; insurance, rental of land and buildings, and other expenses:

(i) rental of land and buildings, when such premises meet all requirements of the board of public education and the department of health and environmental sciences—no such costs may be charged to the special program without specific authorization from the superintendent of public instruction unless the land and buildings are shared between the special and regular pupils, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total enrollment of the school district of the previous year. Provided, however, that any school district renting land and buildings for special education purposes prior to the 1974-75 school year is not subject to this requirement, and will charge a portion of the total cost when shared with regular programs, to be prorated based on the amount of building space used by each type of program;

(ii) insurance—the superintendent of public instruction shall make regulations fixing a ratio for insurance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors;

(iii) all other expenses—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year.

(j) Capital outlay; remodeling and improvements, equipment and other:

(i) classroom remodeling and improvements for a program for handicapped students who need special facilities—the actual total cost; all other remodeling and improvements—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(ii) equipment—the actual total cost;

(iii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost.

(iv) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost.

(v) other—the amount allowed for budget purposes may not exceed the amount budgeted per regular ANB for the current year.

(k) Room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to September 1, 1977, revise the rules and regulations, in accordance with the policies of the board of public education, for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(d) of this section;

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(j)(ii) of this section; and

(d) prescribing formulas for calculating the portion of operation and maintenance costs, insurance, building and rental costs properly allocable to the special programs, as prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and (1)(i)(ii) of this section.

(3) An annual accounting of all expenditures of school district general fund monies for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the maximum-budget-without-a-vote for special education.

History: En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977.

Title of Act

An act enumerating the allowable costs of special education programs which a school district may count for the purpose of assistance from the foundation program and requiring an annual accounting; and repealing section 75-7813, R. C. M. 1947.

Amendments

The 1977 amendment substituted "public or private agencies" in subdivision (1)(b)(iv)(A) for "nonprofit agencies"; deleted the references to sites and buildings in the preliminary phrase of subdivision (1)(j); substituted "handicapped students

who need special facilities" in subdivision (1)(j)(i); for "physically handicapped students"; deleted a former subdivision (1)(j)(iii) which restricted costs chargeable to the special program for sites and buildings; inserted subdivisions (1)(j)(iii) and (1)(j)(iv); redesignated former subdivision (1)(j)(iv) as subdivision (1)(j)(v); substituted "September 1, 1977" in subsection (2) for "the time when a district must have prepared its budget for the 1975-1976 year"; substituted "revise the rules and regulations" in subsection (2) for "promulgate the rules and regulations"; and added subsection (4).

Repealing Clause

Section 2 of Ch. 344, Laws 1974 read "Section 75-7813, R. C. M. 1947, is repealed."

75-7814. Special education child eligibility for transportation. With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation which shall be provided by the resident district when:

(1) he is enrolled in a special education class or program operated by the district of such child's residence;

(2) he is enrolled in a special education class or program operated by a Montana district other than the child's resident district;

(3) he is enrolled under an approved tuition agreement in a special education class or program operated outside of the state of Montana; or

(4) he is enrolled under an approved tuition agreement in a private institution.

History: En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977.

shall be provided by the resident district" near the beginning of the section; added subdivision (4); and made minor changes in phraseology and punctuation.

Amendments

The 1977 amendment inserted "which

75-7816. Financial assistance for under-six year-old special education class or program. Any district operating an approved special education class or program for children under the age of 6 years shall be eligible for financial assistance in accordance with 75-7813.1 and for transportation reimbursement under 75-7815.

History: En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977.

of age" after "6 years"; substituted "75-7813.1" for "75-7813"; and made minor changes in style.

Amendments

The 1977 amendment deleted "or for people who are not less than twenty-one (21) or more than twenty-five (25) years

Repealing Clause

Section 16 of Ch. 539, Laws 1977 read "Section 75-7812, R. C. M. 1947, is repealed."

75-7817. Regional special education services. (1) There is established a regional special education services program to provide special education services to handicapped children who cannot efficiently be served by a program operated by an individual school district or by several cooperating school districts. Regional special education services shall be limited to:

(a) providing direct services to handicapped children who are not adequately served by a district program;

(b) initiating special services for handicapped children as a service model which may then be continued as an individual district or cooperative district program;

(c) coordinating and conducting in-service training for special education and local district personnel in the region; and

(d) assisting local districts in the region in the development and expansion of individual district or cooperative district programs.

(2) Funds for such services shall be appropriated to the superintendent of public instruction from state equalization funds and shall be available to support regional special education programs and services. Such funds may be supplemented by appropriate federal funds. The authorization for regional special education services for children expires on June 30, 1980.

History: En. 75-7817 by Sec. 4, Ch. 539, L. 1977.

sections 75-7801, 75-7802, 75-7803, 75-7804, 75-7805, 75-7806, 75-7807, 75-7808, 75-7809, 75-7811, 75-7813.1, 75-7814, and 75-7816, R. C. M. 1947; repealing section 75-7812, R. C. M. 1947.

Title of Act

An act for the general revision of laws relating to special education; amending

CHAPTER 79—TRAFFIC EDUCATION

Section

75-7906. Annual allocation and distribution of traffic education account proceeds, and allocation for state administration.

75-7906. Annual allocation and distribution of traffic education account proceeds, and allocation for state administration. The superintendent of

public instruction shall annually order the distribution of all moneys in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education moneys shall be based on the distribution policy promulgated by the superintendent of public instruction; provided that the reimbursements to districts shall be based upon the number of pupils, who in a given school fiscal year, complete an approved traffic education course including both the classroom instruction and behind-the-wheel driving.

Before such fund is disbursed, there shall be deducted an amount necessary to provide for the state administration of the traffic education program by the superintendent of public instruction. Such state administration may include development, printing, and distribution of essential materials; preparation of teachers of traffic education; state supervision of the program; and any and all other activities deemed necessary by the superintendent of public instruction.

History: En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973.

Amendments

The 1973 amendment deleted from the second paragraph a final sentence limiting the amount deducted to \$24,000 annually.

CHAPTER 80—SCHOOL FOOD SERVICES

Section

75-8007. Pupils in state institutional schools included.

75-8002. Acceptance, expenditure and administration, etc.

Cross-References

Board of public education to exercise

powers and duties of board of education, sec. 75-5617 (1).

75-8007. Pupils in state institutional schools included. The provisions of sections 75-8002 through 75-8006 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

History: En. Sec. 1, Ch. 92, L. 1973.

Title of Act

An act to include pupils in state insti-

tutional schools meeting eligibility requirements in the school food services program.

CHAPTER 81—COMMUNITY COLLEGE DISTRICTS

Section

- 75-8104. Requirements for organization of community college district.
- 75-8107. Election of trustees—districts from which elected—and terms of office.
- 75-8113. Qualifying and organization of board of trustees.
- 75-8114. Election of trustees after organization of community college district.
- 75-8117. Board of trustees meetings, quorum, travel, reimbursements and seal.
- 75-8117.1. Powers and duties.
- 75-8119. Courses of instruction and tuition fees.
- 75-8122. Sources of financing for and types of capital expenditures.
- 75-8128. Financing budget.
- 75-8132. Tax levy.

75-8103. Supervision by board of regents.

Cross-References

Board of regents to exercise powers and

duties of board of education, sec. 75-5617 (2).

75-8104. Requirements for organization of community college district.

The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area coincides with the then-existing boundaries of contiguous elementary districts of one or more counties.

(2) The taxable value of the proposed area is at least \$10 million.

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.

History: En. 75-8104 by Sec. 451, Ch. 5, L. 1971; amd. Sec. 47, Ch. 566, L. 1977.

Amendments

The 1977 amendment changed the mini-

num requirement in subdivision (2) from \$30 million in assessed valuation to \$10 million in taxable value; and made minor changes in phraseology, punctuation and style.

75-8106. Call of community college district organization election, etc.**Cross-References**

Board of regents to exercise powers and

duties of board of education, sec. 75-5617 (2).

75-8107. Election of trustees—districts from which elected—and terms of office. The regents shall provide for the election of trustees of the proposed community college district at the election held for the approval of its organization. Seven (7) trustees shall be elected at large, except that should there be in such proposed community college district one (1) or more high school districts or part of a high school district within the community college district with more than forty-three per cent (43%) and not more than fifty per cent (50%) of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three (3) trustees and the remaining trustees shall be elected at large from the remainder of the proposed community college district. Should any such high school district or such part of a high school district have more than fifty per cent (50%) of the population of the proposed district, then four (4) trustees shall be elected from such high school district or such part of high school district and three (3) trustees at large from the remainder of the proposed community college district. If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes shall be elected for a term of three (3) years, the two receiving the next greatest number of votes, for a term of two (2) years, and the two receiving the next greatest number of votes, for a term of one (1) year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for three (3) years, the two who shall serve for two (2) years, and the two who shall serve for one (1) year. Thereafter, all trustees elected shall serve for terms of three (3) years each.

History: En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973; amd. Sec. 1, Ch. 159, L. 1975.

Amendments

The 1973 amendment substituted "population" or "census" for "school census" or "total school census" in three places.

The 1975 amendment revised the provisions as to the terms of trustees which formerly specified procedures for election based on a seven-year term.

Repealing Clause

Section 15 of Ch. 137, Laws 1973 read "Sections 75-5708, 75-5810, 75-5936 through

75-5938, and 75-6909 through 75-6911 are repealed."

Effective Date

Section 2 of Ch. 159, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 26, 1975.

75-8113. Qualifying and organization of board of trustees. Newly elected members of the board of trustees of the community college district shall be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of education, the board of trustees shall be organized by the election of a president and vice-president and a secretary; said secretary may be or may not be a member of the board. The treasurer of the community college district shall be the county treasurer of the county in which the community college facilities are located.

History: En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973.

XIX, section 1, of" before "the constitution of Montana" at the end of the first sentence.

Amendments

The 1973 amendment deleted "article

75-8114. Election of trustees after organization of community college district. After organization, the registered electors of the community college district shall vote for trustees on the first Tuesday in April, and such elections shall be conducted by the component elementary school districts within such community college district upon the order of the board of trustees of the community college district. Such order shall be transmitted to the appropriate trustees not less than forty (40) days prior to the regular school election day.

Notice of the community college district trustee election shall be given by the board of trustees of the community college district by publication in one (1) or more newspaper of general circulation within each county, not less than once a week for two (2) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of the election. This notice shall be in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that area. All candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than thirty (30) days prior to the date of election. If an electronic voting system or voting machines are not used in the component elementary school district or districts which conduct the election, then the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be

conducted in accordance with the school election laws. All costs incident to election of the community college trustees shall be borne by the community college district including one-half ($\frac{1}{2}$) of the compensation of the judges for the school elections; provided that, if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election.

History: En. 75-8114 by Sec. 461, Ch. 5,
L. 1971; amd. Sec. 2, Ch. 121, L. 1977.

Amendments

The 1977 amendment changed the day of the election of the trustees from the first Saturday to the first Tuesday in April in the first sentence of the section.

75-8117. Board of trustees meetings, quorum, travel, reimbursements and seal. The board of trustees of the community college shall hold monthly meetings within the community college district on such day of the month the trustees may set. The president and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district, if in their judgment necessity requires it. The secretary of the board shall give each member a forty-eight (48) hour written notice of all special meetings.

A majority of the board of trustees shall constitute a quorum for the transaction of business except that no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership shall vote in favor of such action.

The members of the board of trustees shall receive mileage as provided for in 59-801 for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

The board shall keep a common seal with which to attest its official acts.

History: En. 75-8117 by Sec. 464, Ch. 5,
L. 1971; amd. Sec. 1, Ch. 163, L. 1971;
amd. Sec. 3, Ch. 121, L. 1977.

Amendments

The 1977 amendment substituted "mileage as provided for in 59-801" in the third paragraph for "ten cents (10¢) per mile."

75-8117.1. Powers and duties. The trustees of a community college district shall, subject to supervision by the board of regents:

- (1) have general control and supervision of the community college;
- (2) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;
- (3) grant certificates and degrees to the graduates of the community college;
- (4) keep a record of its proceedings;
- (5) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the community college;
- (6) receive from the state board of land commissioners, other boards, agencies, or persons or from the government of the United States all funds, incomes, and other property the community college may be entitled to

receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(7) have general control of all receipts and disbursements of the community college;

(8) appoint and dismiss a president and faculty for the community college, appoint and dismiss any other necessary officers, agents, and employees, fix their compensation, and set the terms and conditions of their employment;

(9) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

(10) call and conduct the elections of the district in accordance with the school election chapter of this title;

(11) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title; and

(12) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

History: En. 75-8117.1 by Sec. 5, Ch. 121, L. 1977.

Title of Act

An act to make clear the application of retirement fund provisions to community college districts; to change the date for community college elections to the first

Tuesday in April; to increase travel expense reimbursement of trustees; to clarify county attorneys' duties; and to generally revise and clarify powers and duties of community college district trustees; amending sections 75-7204, 75-8114, 75-8117, 75-8119, and 75-8305, R. C. M. 1947; and providing an immediate effective date.

75-8119. Courses of instruction and tuition fees. (1) A community college district shall provide instruction in academic, occupational, and adult education, subject to the approval of the board of regents of higher education. The board of trustees of such district may, in their discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) In addition thereto, such board of trustees may prescribe such other fees as it considers necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses.

History: En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971; amd. Sec. 4, Ch. 121, L. 1977.

Amendments

The 1977 amendment rewrote this section. For prior version, see parent volume.

75-8122. Sources of financing for and types of capital expenditures. The board of trustees of any community college district is hereby vested with the power and authority to:

(1) to (3). * * * [Same as parent volume.]

(4) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds chapter of this title.

The board of trustees of a community college district is further vested with the power and authority to accept or borrow moneys for the purposes of this section and to repay such obligations from the various revenues of the college.

History: En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973.

mills; deleted "from the federal government" after "to accept or borrow moneys" in the final paragraph; and added "and to repay such obligations from the various revenues of the college" to the end of the section.

Amendments

The 1973 amendment substituted subdivision (4) for a subdivision authorizing an additional tax levy not exceeding ten

75-8128. Financing budget. The annual operating budget of a community college district shall be financed at a 65/35 state to local ratio as defined by the board of regents in the order enumerated below:

(1) The estimated revenue to be realized from student tuition and fees as approved by the board of trustees.

(2) A mandatory mill levy on the community college district that when combined with subsection (1) of this section will provide thirty-five per cent (35%) of the annual budget approved by the board of regents.

(3) The total of the revenues expressed in subsections (1) and (2) shall be subtracted from the annual operating budget amount as approved by the board of regents. The amount of the difference shall be financed by a state appropriation for the purpose of financing community colleges in an amount of sixty-five per cent (65%).

If the state cannot fund the community colleges at sixty-five per cent (65%) of the regents' recommended budget, the state shall permit the community college districts to raise the additional funds under section 75-8131.

History: En. Sec. 2, Ch. 401, L. 1971; amd. Sec. 1, Ch. 243, L. 1975.

3 mill levy on the district and the estimated revenue from student tuition during the school fiscal year and provided for subtraction of the total of the revenues from the annual general fund budget amount and financing of the difference by state appropriation; and the amendment added the final paragraph.

Amendments

The 1975 amendment substituted the references to "operating budget" for "general fund budget"; revised the provisions of paragraphs (1), (2) and (3) which listed as sources of revenue a mandatory

75-8132. Tax levy. On the second Monday of August, the board of county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 75-8128(2) plus any approved additional levy. When a community college district has territory in more than one county, the board of county commissioners of each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

History: En. Sec. 6, Ch. 401, L. 1971; amd. Sec. 28, Ch. 266, L. 1977.

Amendments

The 1977 amendment substituted "mandatory mill levy prescribed by 75-8128

(2)" for "the three (3) mill levy pre- in the first sentence; and made a minor
scribed by section (1) of section 75-8128" change in punctuation.

CHAPTER 82—SCHOOL SITES, CONSTRUCTION AND LEASING

Section	
75-8205.	Trustees may sell property when resolution passed after hearing, and appeal procedure.
75-8206.	Review and approval of school building plans and specifications.
75-8206.1.	Department of administration to co-ordinate review of construction plans.
75-8207.	Regulations of board of health.
75-8209.	Authorization to lease buildings or land for school purposes.
75-8211.	Leasing district property and disposition of any rentals.

75-8205. Trustees may sell property when resolution passed after hearing, and appeal procedure. Whenever the trustees of any district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of such district, the trustees may sell or otherwise dispose of such real or personal property in accordance with this section and without conforming to the provisions of section 75-8204.

The trustees of any district shall adopt a resolution stating their intention to sell or otherwise dispose of district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district. When such a resolution is adopted, the trustees shall set the date of the trustees meeting when they shall consider the adoption of a resolution to authorize the sale or other disposition of such real or personal property. The trustees shall cause notices to be posted in the manner required for school elections that state the text of the resolution of intention to sell or dispose of the real or personal property and the time, date, and place when the resolution authorizing the sale or other disposition will be considered for adoption. Any elector of the district shall have the right to be present and protest the passage of the resolution. If the trustees adopt the resolution and an elector has protested such adoption at the trustee meeting conducted for the hearing on the resolution, such resolution shall not become effective for five (5) days after the date of its adoption.

Any taxpayer may appeal the resolution of the trustees, at any time within five (5) days after the date of the resolution, to the district court by filing a verified petition with the clerk of such court and serving a copy of such petition upon the district. The petition shall set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition shall stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest, convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it deems necessary. Its proceedings shall be summary and informal, and its decision shall be final.

The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of such real or personal property in any reasonable manner that they determine to be in the best interests of

the district. The moneys realized from the sale or disposal shall be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

History: En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973.

tion to personal property by inserting "or personal" before "property" throughout the section.

Amendments

The 1973 amendment extended this sec-

75-8206. Review and approval of school building plans and specifications. (1) No school building in the state, either publicly or privately owned or operated, shall be built, enlarged, remodeled, or repaired until the plans and specifications for such construction have been submitted to and approved by the department of administration.

(2) The plans and specifications shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the rules promulgated by the department of administration.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications submitted to the department of administration to assist the districts in designing facilities for optimum utilization.

History: En. 75-8206 by Sec. 478, Ch. 5, L. 1971; amd. Sec. 11, Ch. 504, L. 1977.

Amendments

The 1977 amendment substituted "department of administration" for "board of health" throughout the section; deleted references to state fire marshal after references to the department of administra-

tion throughout the section; deleted "and such public agencies have endorsed their approval on such plans and specifications" at the end of subsection (1); deleted the former second sentence in subsection (2); substituted "may" for "shall" in subsection (3); and made minor changes in phraseology and style. For prior version, see parent volume.

75-8206.1. Department of administration to co-ordinate review of construction plans. All school construction plans requiring state review and approval shall be submitted to the department of administration for approval. The department of administration shall be responsible for co-ordination of school construction plan review and approval required by any other state agency.

History: En. Sec. 1, Ch. 49, L. 1973.

construction plans in the department of administration.

Title of Act

An act to centralize review of school

75-8207. Regulations of board of health. (1) The state board of health shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical wellbeing of the pupils, teachers, and others who frequent schools.

(2) The state board of health shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977.

Amendments

The 1977 amendment deleted regulation requirements for school buildings, ventilation, heating, and lighting. For prior version, see parent volume.

75-8209. Authorization to lease buildings or land for school purposes.

The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease such building or land from the county, municipality, another district, or any person. The lease may be for a term of not more than 3 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections; in which case the lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

History: En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977.

Amendments

The 1977 amendment inserted "or land" in two places in the first sentence; inserted "municipality" near the end of the

first sentence; deleted "Except as provided in section 75-8203" at the beginning of the second sentence; added "unless prior approval * * * more than 99 years" at the end of the second sentence; and made minor changes in phraseology, punctuation and style.

75-8211. Leasing district property and disposition of any rentals.

The trustees of any district may rent, lease, or let any buildings, land or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting may, in the discretion of the trustees, be used for any proper school purpose and deposited in such fund as the trustees consider appropriate.

History: En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973; amd. Sec. 3, Ch. 424, L. 1977.

Amendments

The 1973 amendment inserted "the housing and dormitory fund or" in the second sentence of this section.

The 1977 amendment inserted "land" in the first sentence; substituted "may, in the discretion * * * trustees consider appropriate" at the end of the last sentence for "shall be deposited to the credit of the housing and dormitory fund or that fund which finances the cost of maintaining such real property"; and made a minor change in phraseology.

CHAPTER 83—MISCELLANEOUS PROVISIONS**Section**

- 75-8305. Duty of county attorney.
- 75-8305.1. Conflict of interest.
- 75-8307. Penalty.
- 75-8308.1. Fire drills to be conducted regularly.
- 75-8308.2. Number of fire drills required—avoiding severe cold weather.
- 75-8308.3. Times of drills to vary.
- 75-8308.4. Drill to sound on fire alarm system.
- 75-8308.5. Fire department to be called for actual fire.
- 75-8308.6. Recall signal to be distinct—control of signal.
- 75-8308.7. Inspection of exits—co-operation with fire department in drills.
- 75-8310. School safety patrols.
- 75-8312. Educational impact statements defined—when required.
- 75-8313. Judicial enforcement.
- 75-8314. Policy on part-time assistant coaches in high schools—enforcement.

75-8305. Duty of county attorney. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public

officials, may be a party, however, the trustees of any school district or community college district may, upon consent of the county attorney, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977.

Amendments

The 1974 amendment inserted "other" before "attorney" near the end of the section.

The 1977 amendment inserted "or community college district" twice in the section; and inserted "or community college" near the end of the section.

Effective Date

Section 7 of Ch. 121, Laws 1977 provided the act should be effective on its passage and approval. Approved March 25, 1977.

75-8305.1. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974.

Title of Act

An act to amend section 75-8305, R. C.

M. 1947; authorizing and requiring trustees of school districts to employ other legal counsel than the county attorney in the event of a conflict of interest.

75-8307. Penalty. Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than \$20 or more than \$200 or by imprisonment in the county jail for not less than 5 days or more than 30 days, or by both such fine and imprisonment.

History: En. 75-8307 by Sec. 491, Ch. 5, L. 1971; amd. Sec. 29, Ch. 266, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

75-8308. Repealed.

Repeal

Section 75-8308 (Sec. 492, Ch. 5, L. 1971), relating to fire drills in schools,

was repealed by Sec. 8, Ch. 424, Laws 1973. For new law, see secs. 75-8308.1 to 75-8308.7.

75-8308.1. Fire drills to be conducted regularly. Fire exit drills shall be conducted regularly in accordance with the applicable provisions of the following sections.

History: En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973.

Title of Act

An act to provide procedures for fire drills in schools; and repealing sections 75-8308 and 75-8309, R. C. M. 1947.

75-8308.2. Number of fire drills required—avoiding severe cold weather. There shall be at least eight (8) fire exit drills a year in schools. In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the

required number of drills before cold weather so as not to endanger the health of the pupils.

History: En. Sec. 2, Ch. 424, L. 1973.

75-8308.3. Times of drills to vary. Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods, etc., so as to avoid distinction between drills and actual fires.

History: En. Sec. 3, Ch. 424, L. 1973.

75-8308.4. Drill to sound on fire alarm system. All fire exit drill alarms shall be sounded on the fire alarm system and not on the signal system used to dismiss classes.

History: En. Sec. 4, Ch. 424, L. 1973.

75-8308.5. Fire department to be called for actual fire. Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

History: En. Sec. 5, Ch. 424, L. 1973.

75-8308.6. Recall signal to be distinct—control of signal. The recall signal shall be one that is separate and distinct from and cannot be mistaken for any other signals. Such signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock.

History: En. Sec. 6, Ch. 424, L. 1973.

75-8308.7. Inspection of exits—co-operation with fire department in drills. It shall be the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors and other exits are in proper condition and co-operate with local fire department authorities in conducting fire drills.

History: En. Sec. 7, Ch. 424, L. 1973.

"Sections 75-8308 and 75-8309, R. C. M. 1947, are repealed."

Repealing Clause

Section 8 of Ch. 424, Laws 1973 read

75-8309. Repealed.

Repeal

Section 75-8309 (Sec. 493, Ch. 5, L. 1971), relating to instruction in fire dan-

gers, was repealed by Sec. 8, Ch. 424, Laws 1973.

75-8310. School safety patrols. (1) The trustees of any district or the administration of any private school may organize and supervise school safety patrols for a school under their authority. The purpose of school safety patrols is to influence and encourage other pupils of the school

to refrain from crossing public highways at points other than regular crossings and to direct pupils as to when and where to cross highways.

(2) The school safety patrol shall be formed from the children of the school who are 9 years of age or more or, if there are none, who are of the highest grade of such school. Before any child may serve on the school safety patrol, the parent or guardian of such child shall give written consent for his child to serve on the school safety patrol.

(3) No liability attaches to a member of the school safety patrol or parent or guardian, by virtue of the organization, maintenance, or operation of such school safety patrol because of injury sustained by any pupil.

(4) Identification and operation of school safety patrols shall be uniform throughout the state and the method of identification and signals to be used shall be as prescribed by the superintendent of public instruction in cooperation with the Montana highway patrol.

(5) Any municipality, city, or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol camp located in this state and may pay the expense necessarily incurred in providing such training out of any funds available for such purpose.

History: En. 75-8310 by Sec. 494, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1977.

section designations; rewrote subsection (3); and made minor changes in phraseology, punctuation and style. For prior version, see parent volume.

Amendments

The 1977 amendment inserted the sub-

75-8312. Educational impact statements defined—when required. When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 75-7104, or intends to open a new strip mine, as defined by 50-1603, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate.

History: En. 75-8312 by Sec. 1, Ch. 119, L. 1975; amd. Sec. 30, Ch. 266, L. 1977.

educational impact statement with the county superintendent of schools.

Title of Act

An act requiring a person about to construct or locate a major industrial facility or open a new strip mine to file an

Amendments

The 1977 amendment inserted "or strip mine" after "major industrial facility" in two places; and made minor changes in phraseology, punctuation and style.

75-8313. Judicial enforcement. A district court, upon petition of a county, may enforce the preceding section [75-8312] with appropriate orders.

History: En. 75-8313 by Sec. 2, Ch. 119, L. 1975.

75-8314. Policy on part-time assistant coaches in high schools—enforcement. (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

History: En. 75-8314 by Sec. 1, Ch. 350, L. 1977.

Title of Act

An act to declare that persons may serve as assistant athletic coaches in private or parochial high schools without being regular faculty members.

CHAPTER 84—ESTABLISHMENT OF MONTANA UNIVERSITY SYSTEM

Section

75-8404. Prohibition against use of name of system.

75-8408. Bureau of mines and geology—purpose.

75-8427. Acceptance of public lands.

75-8402. Definitions.

Cross-References

duties of board of education, sec. 75-5617
Board of regents to exercise powers and (2).

75-8404. Prohibition against use of name of system. (1) The state has the exclusive right to the name "the Montana university system".

(2) No other institution of learning or corporation may use the name "the Montana university system" or similar name.

(3) The attorney general shall bring an action in the name of the state against any person, association, or corporation using the same or similar name.

(4) The penalty for violation of this section shall be the dissolution of the corporation and a fine in a sum not exceeding \$500 or less than \$100.

History: En. 75-8404 by Sec. 4, Ch. 2, L. 1971; amd. Sec. 31, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted "fine in a" in subsection (4); and made minor changes in phraseology, punctuation and style.

75-8408. Bureau of mines and geology—purpose. The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) to (d) * * * [Same as parent volume.]

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems the regents consider valuable to the people of Montana;

(9) communicate special information of Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) to (d) * * * [Same as parent volume.]

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of state lands and make investments. These services are limited to the time available for such work after all other duties of the bureau of mines and geology are served. Written reports shall be made. Travel expenses incurred by the examiner shall be paid as provided for in 59-538, 59-539, and 59-801, as amended, by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the regents.

History: En. 75-8408 by Sec. 8, Ch. 2, L. 1971; amd. Sec. 17, Ch. 453, L. 1977.

Amendments

The 1977 amendment deleted "food, lodging, and incidental" before "expenses"

in the last sentence of subdivision (11); inserted "as provided for in 59-538, 59-539, and 59-801, as amended" in subdivision (11); and made minor changes in phraseology, punctuation and style.

75-8427. Acceptance of public lands. (1) * * * [Same as parent volume.]

(2) The regents may in carrying out the provisions of Title 75, R.C.M., 1947, pledge one-half ($\frac{1}{2}$) of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other

obligations issued by the regents for residence halls or other facilities at western Montana college or at eastern Montana college, provided that any such pledge shall be subject to any prior pledge.

History: En. 75-8427 by Sec. 27, Ch. 2, L. 1971; amd. Sec. 1, Ch. 289, L. 1971; amd. Sec. 8, Ch. 343, L. 1977.

Amendments

The 1977 amendment deleted a former

clause (b) at the end of the section reading "all pledges of income and interest must have the final approval of the state board of examiners"; and made minor changes in phraseology and style.

CHAPTER 85—ADMINISTRATION OF UNIVERSITY SYSTEM

Section

75-8503.3. Motor vehicle regulation—enforcement of regulations—appeals.
75-8504. Borrowing by regents.

Part 1—Regents

75-8501. Powers and duties.

Cross-References

Board of regents to exercise powers and duties of board of education, sec. 75-5617 (2).

Employment Relationship with Faculty

Since board of regents is competent body for determining priorities in higher education, and an important priority is

hiring and keeping competent personnel, appropriations bill which controlled salaries of university employees denied the board power to function effectively by setting its own personnel policies and determining its own priorities, and was unconstitutional. Board of Regents of Higher Education v. Judge, — M —, 543 P 2d 1323.

75-8503.2. Motor vehicle regulation—parking and operation.

Registration of Motor Vehicles

Montana university's power to require registration of vehicles parked on campus and to limit areas in which they can be parked is included under its power to reg-

ulate parking on campus generally, and does not exceed authority to regulate provided in statute. Montana State University v. Ransier, — M —, 536 P 2d 187.

75-8503.3. Motor vehicle regulation—enforcement of regulations—appeals. The regents may authorize the president of each unit to:

(a) to (f) * * * [Same as parent volume.]

(g) To prohibit a student from registering if said student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous one (1) year.

History: En. Sec. 2, Ch. 398, L. 1971; amd. Sec. 1, Ch. 246, L. 1974.

Late Payment of Fines

Montana university's provision that late payment of parking fine constitutes separate offense was permissible under general regulation of parking and was within powers incident to general grant of regulatory authority. Montana State University v. Ransier, — M —, 536 P 2d 187.

Amendments

The 1974 amendment added subdivision (g).

75-8504. Borrowing by regents. In carrying out the above powers, the regents may:

(1) borrow money for any purpose or purposes stated in this chapter, including, if considered desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and

for 1 year thereafter and the creation of a reserve for the payment of bond principal and interest;

(2) make purchases on a time or installment basis;

(3) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds or bonds registered as to ownership of principal only;

(4) pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(a) the net income received from rents, board, or both in housing, food service, and other facilities;

(b) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

(c) other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property; receipts from athletic and other contests, exhibitions, and performances; and collections of admissions and other charges for the use of facilities including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;

(5) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves other than land;

(6) secure any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana or by a resolution establishing covenants of the regents with the holders of such bonds relating to the construction, operation, use, and insurance of the facilities; the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged; the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose; and such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds;

(7) issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued before or after January 29, 1971, by the regents, subject to the following provisions:

(a) refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues

received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of the outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least $\frac{3}{8}$ of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) in any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than \$1 million and shall be invested in the amount and in securities maturing on the dates and bearing interest at the rates which will be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, on that redemption date and any premium required for redemption on that date. The resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. The securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) revenues or other funds on hand, in excess of amount pledged by resolutions or indentures authorizing outstanding bonds for the payment

of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of those bonds and may be invested and disbursed as provided in subsection (c) hereof to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) sell bonds and sell or exchange refunding bonds issued hereunder in the manner and upon the terms as to maturities, interest rates, and redemption privileges and for the price that the regents determine with the approval of the department of administration.

History: En. 75-8504 by Sec. 33, Ch. 2, L. 1971; amd. Sec. 32, Ch. 266, L. 1977.

Amendments

The 1977 amendment inserted "before or after January 29, 1971" near the end of

the introductory paragraph of subsection (7); substituted "department of administration" for "state controller" at the end of subsection (8); and made minor changes in phraseology, punctuation and style.

CHAPTER 86—FINANCE FOR UNIVERSITY SYSTEM

Section

- 75-8601. Charges for tuition—waiver of nonresident fees.
- 75-8605. Receipt of funds.
- 75-8609. Control of expenditures.
- 75-8611. Honorably discharged veterans—free tuition at university of Montana.
- 75-8612. Fee waiver—children of prisoners of war and persons killed in action.
- 75-8613. Board of regents of higher education to determine eligibility.
- 75-8614. Supervision of attendance and charges.

75-8601. Charges for tuition—waiver of nonresident fees. The regents may:

(a). * * * [Same as parent volume.]

(b) waive at their discretion, nonresident tuition for selected and approved nonresident students not to exceed at any unit two per cent (2%) of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary such tuition may be waived in excess of two per cent (2%) of unit enrollment for nonresident students who enroll under provisions of any WICHE sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the reciprocal state.

(c) waive resident tuition for students at least sixty-two (62) years of age.

History: En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973; amd. Sec. 1, Ch. 171, L. 1974.

Amendments

The 1973 amendment deleted a subsection

number at the beginning of the section; deleted "at Montana college of mineral science and technology" after "nonresident students who enroll" in the latter part of subdivision (b); substituted "any WICHE sponsored state reciprocal agreements which provide for the payment, where required, of the student support fee by the

reciprocal state" at the end of subdivision (b) for "the WICHE sponsored eight (8) state reciprocal agreement for mineral engineering education"; and deleted a subsection (2) reading, "No nonresident student

may be admitted to the exclusion of any resident student."

The 1974 amendment added subdivision (c).

75-8605. Receipt of funds. (1) * * * [Same as parent volume.]

(2) On or before September 1 of each year the state university shall make detailed reports of the amounts received and disbursed under the provisions of the Acts of Congress of March [August] 30, 1890, of March 4, 1907, and of March 16, 1906, to the secretaries of agriculture and interior of the United States, as required by the Acts of Congress.

History: En. 75-8605 by Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977.

Amendments

The 1977 amendment deleted "and shall file duplicates with the state board of examiners on or before September 10 of each year" from the end of the section.

75-8609. Control of expenditures. Pursuant to the terms of appropriations of the legislature or of congress or of gifts of donors, the regents shall determine the need for all expenditures and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with state purchases.

History: En. 75-8609 by Sec. 50, Ch. 2, L. 1971; amd. Sec. 33, Ch. 266, L. 1977.

Amendments

The 1977 amendment substituted "state

purchases" for "the state purchasing agent" at the end of the section; and made minor changes in phraseology, punctuation and style.

75-8611. Honorably discharged veterans—free tuition at university of Montana. All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of this state at the time of their entry into the United States forces shall have free fees and tuition in any of the units of the university of Montana, including the law and medical departments, and for extra studies in any of the units of the university of Montana. However, this act does not apply to persons who qualify under the provisions of the "Servicemen's Readjustment Act of 1944," being "Public Law 346 of the seventy-eighth Congress, chapter 268, second session" and "Public Law 16 of the seventy-eighth Congress, chapter 22, first session," and all acts supplementary and amendatory thereof.

History: En. Sec. 1, Ch. 194, L. 1943; amd. Sec. 1, Ch. 44, L. 1945; Sec. 77-901, R. C. M. 1947; amd. and redes. 75-8611 by Sec. 4, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section and made minor changes in phraseology.

75-8612. Fee waiver—children of prisoners of war and persons killed in action. (1) The board of regents of higher education may waive the charges for the matriculation, tuition, and any educational fees at any of the units of the Montana university system for the children of members of the armed forces of the United States who:

(a) served on active duty during World War II or the Korean or Vietnam conflicts;

(b) had legal residence in this state at the time of entry into the service; and

(c) are killed in action or die as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States.

(2) The educational assistance to which an eligible person is entitled under this section may be afforded him during the period beginning on his 18th birthday or on the successful completion of his secondary schooling, whichever first occurs, and ending on his 23rd birthday.

(3) If he serves on duty with the armed forces as an eligible person after his 18th birthday but before his 23rd birthday, then the period ends 5 years after his first discharge or release from duty with the armed forces. This period may not be extended beyond his 31st birthday by reason of this subsection.

(4) The board of regents of higher education may waive the charges for the matriculation, tuition, and all educational fees for the spouse and children of any person who is a resident of Montana and who, either while serving in the armed forces of the United States was declared by the secretary of defense of the United States to be a prisoner of war or missing in action in connection with the conflict in Southeast Asia after January 1, 1961, or while serving the United States in a civilian capacity was declared by the secretary of state of the United States to be missing or captured in connection with the conflict in Southeast Asia after the same date.

(5) Any person who is eligible for the waiver of tuition and fees, upon being accepted for enrollment in any state-supported institution of higher education or state-supported technical or vocational school, shall continue to be eligible for such waiver until the completion of the bachelor of arts or equivalent degree or certification of completion as long as he remains enrolled in good standing at the school or institution. Any eligible person may not be disqualified by either the return of the prisoner of war or person missing in action or the reported death of the person.

History: En. Sec. 1, Ch. 141, L. 1957; amd. Sec. 1, Ch. 150, L. 1965; amd. Sec. 1, Ch. 225, L. 1969; amd. Sec. 1, Ch. 64, L. 1974; Sec. 77-909, R. C. M. 1947; amd. and redes. 75-8612 by Sec. 5, Ch. 94, L. 1974; amd. Sec. 3, Ch. 49, L. 1977.

Amendments

The 1969 amendment substituted "Korean or Vietnam conflicts" for "Korean conflict."

Chapter 64, Laws of 1974, substituted "board of regents of higher education" for "state board of education" in the first sentence of subsection (1) and added the final two paragraphs designated by the compiler as subsections (4) and (5).

Chapter 94, Laws of 1974, renumbered the section; inserted the numerical subsection designation (1) at the beginning of the first paragraph; substituted numerical subsection designations (2) and (3)

for (a) and (b) at the beginning of the next two paragraphs; and made minor changes in phraseology and punctuation.

The 1977 amendment inserted "at any of the units of the Montana university system" near the beginning of subsection (1); deleted "who attend any of the units of the greater university of Montana" from the end of subdivision (1)(c); deleted "excluding from the five (5) years all periods during which the eligible person served on active duty before August 1, 1963, pursuant to (a) a call or order thereto issued to him as a reserve after July 30, 1961, or (b) an extension of an enlistment, appointment or period of duty with the armed forces under the laws of the United States" from the end of the first sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

75-8613. Board of regents of higher education to determine eligibility. The board of regents of higher education shall determine the eligibility of a child who makes application for the benefits provided for in this act. A finding by the United States veterans' administration that a member was killed in action or died as the result of injury or other disability incurred in action is binding upon the board, but in the absence of such a finding the board shall determine the facts.

History: En. Sec. 2, Ch. 141, L. 1957; Sec. 77-910, E. C. M. 1947; amd. and redes. 75-8613 by Sec. 6, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "board of regents of higher education" for "board of education" and "state board of education" in the caption and in the first sentence; and made minor changes in phraseology.

75-8614. Supervision of attendance and charges. The board of regents of higher education shall satisfy itself of the attendance of a child at an institution.

History: En. Sec. 3, Ch. 141, L. 1957; Sec. 77-911, E. C. M. 1947; amd. and redes. 75-8614 by Sec. 7, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "board of regents of higher education" for "state board of education"; and made minor changes in phraseology.

75-8615. State tax levy—support of public education facilities.

Compiler's Notes

Section 1, Ch. 463, Laws 1977 read "There is a new R. C. M. section numbered 75-8615 that reads as follows:

"75-8615. State tax levy—support of public education institutions. Upon the approval of the electors of this state to be determined by their vote at the general election to be held in November of 1978, the legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1979. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system and other public educational institutions

subject to board of regents' supervision."

Section 2, Ch. 463, Laws 1977, provides: "Submission to electorate. The question whether this act will become effective shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title of this act, and the following:

☐ FOR the 6-mill levy for the support of public educational institutions subject to board of regents' supervision.

☐ AGAINST the 6-mill levy for the support of public educational institutions subject to board of regents' supervision."

CHAPTER 87—STUDENTS IN UNIVERSITY SYSTEM

Section

75-8701. Qualification of students.

75-8702. Definitions.

75-8703. Presumptions and rules as to domicile.

75-8704. Evidence as to domiciliary intent—changes in status.

75-8705. Indians—nonpayment of fees.

75-8706. Student's right to privacy—legislative intent.

75-8707. Contracts waiving right to privacy prohibited.

75-8708. Written notice required for entry to student's room—emergency.

75-8709. Search in accordance with law.

75-8710. Release of student records.

75-8711. Academic records to be kept separate—student's right to examine records.

75-8701. Qualification of students. The university system is open to all people subject to such uniform regulations as the regents deem proper. All able-bodied students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

History: En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975.

Amendments

The 1975 amendment deleted "male" before "students" near the beginning of the second sentence.

75-8702. Definitions. Terms used in this chapter are defined as follows:

- (1). * * * [Same as parent volume.]
- (2) "emancipated minor" means person under the age of eighteen (18) years who supports himself from his own earnings or is married.
- (a). * * * [Same as parent volume.]
- (3) "minor" means male or female person who has not obtained the age of eighteen (18) years.
- (4) and (5). * * * [Same as parent volume.]
- (6) In the event the definition of residency or any portion thereof is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system shall have authority to make rules and regulations on what constitutes adequate evidence of residency status not inconsistent with such court decisions.

History: En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973.

Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 397. Neither amendatory act mentioned or incorporated the changes made by the other.

Amendments

Chapter 94, Laws of 1973, reduced the age specified in subdivisions (2) and (3) from nineteen to eighteen years.

Chapter 397, Laws of 1973, added subdivision (6).

75-8703. Presumptions and rules as to domicile. (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Except as provided in the next subsection, residence is not gained or lost because of relocation as a member of the armed forces of the United States.

(4) Residence may be gained by a member of the armed forces of the United States, his spouse, or his children by living in Montana for 1 year and complying with the provisions of this section.

(5) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(6) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(7) Montana high school graduates are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; or

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(8) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child or both. If such person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces his residency in any other state and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate, so long as he continues his Montana domicile. In the administration of this subsection, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

History: En. 75-8703 by Sec. 54, Ch. 2, L. 1971; amd. Sec. 2, Ch. 395, L. 1971; amd. Sec. 2, Ch. 164, L. 1975; amd. Sec. 34, Ch. 266, L. 1977.

Amendments

The 1975 amendment rewrote subsection (1) which provided that the domicile of a minor was: "(a) of his father; or (b) of his mother if there is no father; or (c) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state; or (d) of the parent who has custody of the minor"; rewrote subsection

(2) which read: "The domicile of a married woman is that of her husband, except that a resident woman student who marries a nonresident does not by that fact alone lose her resident status for tuition and fee purposes for a period of four (4) years after her marriage"; inserted "or the parent having legal custody, or if neither parent has legal custody the parent with whom they customarily reside" in "subdivision (7)(b)"; and made a minor change in phraseology.

The 1977 amendment made minor changes in phraseology, punctuation and style.

75-8704. Evidence as to domiciliary intent—changes in status. (1) and (2) * * * [Same as parent volume.]

(3) A minor shall qualify for a change in status only if his parents or the parent having legal custody, or if neither parent has legal custody the parent with whom he customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile heretofore set forth.

(4) and (5) * * * [Same as parent volume.]

History: En. 75-8704 by Sec. 55, Ch. 2, L. 1971; amd. Sec. 3, Ch. 395, L. 1971; amd. Sec. 3, Ch. 164, L. 1975.

parent having legal custody, or if neither parent has legal custody, the parent with whom he customarily resides" after "his parents" in subsection (3).

Amendments

The 1975 amendment inserted "or the

75-8705. Indians—nonpayment of fees. (1) Persons of one-fourth Indian blood or more who are bona fide residents of the state of Montana for at least 1 year prior to enrollment in the Montana university system, have completed a 4-year course in an accredited high school or federal Indian school, and show financial need and evidence of studious and industrious habits may enroll in the university system without the payment of fees.

(2) Each unit shall make rules governing the selection of these students.

History: En. 75-8705 by Sec. 56, Ch. 2, L. 1971; amd. Sec. 35, Ch. 266, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

75-8706. Student's right to privacy—legislative intent. It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities which are necessary to protect the health, safety and privacy of a person's residence and the privacy of his records. Intrusions by police and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. Further, a student may not be subjected to discrimination in the manner of covert records.

History: En. Sec. 1, Ch. 357, L. 1973.

Title of Act

An act requiring Montana colleges and

universities to develop procedures to protect a student's right to privacy concerning his place of residence and his college or university records.

75-8707. Contracts waiving right to privacy prohibited. A university or college facility may not require a student to sign any contract which would waive his or her right to privacy and due process of law.

History: En. Sec. 2, Ch. 357, L. 1973.

75-8708. Written notice required for entry to student's room—emergency. An authorized official of the university or college may not enter the room of a student located at such institution unless he has given the student in writing a notice. An emergency such as a fire or a call for help, or where there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In such an emergency evidence of crime obtained as a result of such emergency entry shall not be admissible in any court of law unless due process of law has been satisfied in obtaining such evidence.

History: En. Sec. 3, Ch. 357, L. 1973.

75-8709. Search in accordance with law. A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state and nation.

History: En. Sec. 4, Ch. 357, L. 1973.

75-8710. Release of student records. A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

History: En. Sec. 5, Ch. 357, L. 1973.

75-8711. Academic records to be kept separate—student's right to examine records. Academic records shall be kept separate from disciplinary and all other records. Academic transcripts shall contain only information of academic nature. A student shall have the right to examine all written summaries, descriptions, statements or reports of academic or disciplinary nature which may have been compiled upon him or her.

History: En. Sec. 6, Ch. 357, L. 1973.

CHAPTER 88—MISCELLANEOUS PROVISIONS RELATING TO UNIVERSITY SYSTEM

Section

75-8801. Research programs—powers of units.

75-8806. Duties of the co-operative extension service.

75-8801. Research programs—powers of units. (1) to (3) * * * [Same as parent volume.]

History: En. 75-8801 by Sec. 57, Ch. 2,
L. 1971; amd. Sec. 10, Ch. 343, L. 1977.

Amendments

The 1977 amendment deleted a subsection (4) as set out in the parent volume.

75-8802. Repealed.

Repeal

Section 75-8802 (Sec. 58, Ch. 2, L. 1971), relating to contracts for military

training at units of the university system, was repealed by Sec. 19, Ch. 343, Laws 1977.

75-8806. Duties of the co-operative extension service. The co-operative extension service within the department of education shall conduct investigations pertaining to insects and other arthropods affecting plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, the authorized employees of the co-operative extension service shall go to the scene of the infestation, shall determine the extent and seriousness of the infestation, and make public the best remedies to be employed.

History: En. Sec. 2, Ch. 75, L. 1967; Sec. 82-804.2, R. C. M. 1947; amd. and redes. 75-8806 by Sec. 127, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted the first sentence for "It shall be the duty of the state en-

tomologist to conduct investigations pertaining to insects and other arthropods which affect or may affect plants and animals"; substituted "the authorized employees of the co-operative extension service shall go" for "it shall be his duty,

so far as it is possible without conflicting with his other duties, to go" in the second sentence; deleted "The state entomologist or said assistant" before "shall determine" in the second sentence; and made minor changes in phraseology.

CHAPTER 89—HEALTH EDUCATION—DRUG AND ALCOHOL ABUSE INSTRUCTION

Section

75-8901. Purpose of act—legislative intent.

75-8901. Purpose of act—legislative intent. It is the purpose of this act to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislative assembly intends to require education graduates of any unit of the Montana university system or any private college, or private university in Montana, to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students.

History: En. Sec. 1, Ch. 396, L. 1971; amd. Sec. 3, Ch. 137, L. 1975.

aware of the problems resulting from drug and alcohol abuse" at the end of the section.

Amendments

The 1975 amendment deleted "and to require all public and private junior high school students and all public and private high school students in Montana to be

Repealing Clause

Section 4 of Ch. 137, Laws 1975 read "Sections 75-7503, 75-7504, 75-7509, and 75-8904, R. C. M. 1947, are repealed."

75-8904. Repealed.

Repeal.

Section 75-8904 (Sec 4, Ch. 396, L. 1971), relating to high school and junior

high school drug and alcohol abuse instruction, was repealed by Sec. 4, Ch. 137, Laws 1975.

CHAPTER 90—EDUCATIONAL BROADCASTING COMMISSION

(Repealed—Section 2, Chapter 341, Laws of 1977)

75-9001 to 75-9004. Repealed.

Repeal

Sections 75-9001 to 75-9004 (Secs. 1, 3 to 5, Ch. 215, L. 1974), relating to the educa-

tional broadcasting commission, were repealed by Sec. 2, Ch. 341, Laws 1977.

CHAPTER 91—WORK-STUDY PROGRAM

Section

- 75-9101. Purpose.
- 75-9102. Definitions.
- 75-9103. Montana work-study program.
- 75-9104. Limitation on use of funds.
- 75-9105. Funds supplemental to other funds.
- 75-9106. Administration.
- 75-9107. Eligibility.
- 75-9108. Antidiscrimination.
- 75-9109. Approval of salaries.
- 75-9110. Contributions from employers.
- 75-9111. Severability.

75-9101. Purpose. It is the purpose of this act to help ensure that no resident of Montana be denied attendance at institutions governed, supervised or co-ordinated by the board of regents of higher education because of financial barriers; and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient money to pay the costs accompanying such attendance through employment by state and local governing units, and certain public interest organizations.

History: En. 75-9101 by Sec. 1, Ch. 307,
L. 1974.

Title of Act

An act to create a Montana work-study program to be administered by the board of regents of higher education.

75-9102. Definitions. As used in this act, unless the context otherwise requires:

(1) "Institution" means any public institution of post-secondary education governed, supervised or co-ordinated by the board of regents of higher education.

(2) "Student" means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution, or who is presently enrolled as a full-time student in good standing, as determined by the institution.

History: En. 75-9102 by Sec. 2, Ch. 307,
L. 1974.

75-9103. Montana work-study program. The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this act.

History: En. 75-9103 by Sec. 3, Ch. 307,
L. 1974.

75-9104. Limitation on use of funds. No less than seventy per cent (70%) of the funds allocated to the program shall be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. Such other bases include but are not limited to:

(1) laboratory, teaching and tutorial assistantships requiring particular skills, and

(2) cases in which a student's family cannot demonstrate financial need but in which the student has a desire to contribute toward his education through employment.

History: En. 75-9104 by Sec. 4, Ch. 307,
L. 1974.

75-9105. Funds supplemental to other funds. All funds allocated through this program are supplemental in nature and are not meant to

replace existing federal and state student financial assistance funds, or any other funds that would otherwise be appropriated for student assistance.

History: En. 75-9105 by Sec. 5, Ch. 307,
L. 1974.

75-9106. Administration. The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

History: En. 75-9106 by Sec. 6, Ch. 307,
L. 1974.

75-9107. Eligibility. Any local governing body, state or local administrative agency, department, board, commission, judicial, legislative, or other governmental unit or nonprofit private organization is eligible to employ Montana students under the program as determined by the board of regents of higher education and within the funding limitations of the program which eligibility:

(1) will not result in the displacement of employed workers or impair existing contracts for services;

(2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or factor in an election for public or party office;

(3) will not involve the construction, operation or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship, and

(4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

History: En. 75-9107 by Sec. 7, Ch. 307,
L. 1974.

75-9108. Antidiscrimination. No employer is eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, age, marital status, physical or mental handicap, ancestry, or national origin.

History: En. 75-9108 by Sec. 8, Ch. 307,
L. 1974; amd. Sec. 36, Ch. 266, L. 1977.

Amendments

The 1977 amendment substituted "race, creed, religion, color, political ideas, sex,

age, marital status, physical or mental handicap, ancestry, or national origin" at the end of the section for "race, religion, color, sex, or national origin"; and made a minor change in phraseology.

75-9109. Approval of salaries. The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

History: En. 75-9109 by Sec. 9, Ch. 307,
L. 1974.

75-9110. Contributions from employers. Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than thirty per cent (30%) of the student's hourly wage.

History: En. 75-9110 by Sec. 10, Ch. 307,
L. 1974.

75-9111. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from invalid applications.

History: En. 75-9111 by Sec. 11, Ch. 307,
L. 1974.

CHAPTER 92—PROPRIETARY POST-SECONDARY EDUCATIONAL INSTITUTIONS—LICENSING

Section	
75-9201.	Legislative purpose.
75-9202.	Definitions.
75-9203.	Exemptions.
75-9204.	Administration.
75-9205.	Advisory council.
75-9206.	Powers and duties of the department.
75-9207.	Minimum standards.
75-9208.	Prohibition.
75-9209.	License.
75-9210.	Permit.
75-9211.	Denial of application for license or permit.
75-9212.	Revocation of license or permit.
75-9215.	Civil relief.
75-9216.	Bonds required.
75-9217.	Fees.
75-9218.	Preservation of records.
75-9219.	Enforceability of notes and contracts.
75-9220.	Violations—criminal—penalty.
75-9221.	Jurisdiction of courts—service of process.
75-9222.	Enforcement—injunction.
75-9223.	Severability.

75-9201. Legislative purpose. It is the policy of this state to encourage and enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is recognized that proprietary institutions offering post-secondary educational, vocational and professional instruction perform a useful and necessary service to the citizens of the state in achieving this objective. It is found that certain institutions have either by unscrupulous, unfair and deceptive practices or through substandard instruction deprived the citizens of this state of educational opportunity and subjected them to financial loss. The actions of such institutions also reflect unfavorably upon the reputable proprietary post-secondary institutions which are in the great majority. Thus it is the purpose of this act to provide for the protection, education and welfare of the citizens of this state.

History: En. 75-9201 by Sec. 1, Ch. 296,
L. 1974.

Title of Act

An act regulating certain post-secondary educational institutions, and providing penalties; and providing an effective date.

75-9202. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Education or educational services" means a class, course or program of training, instruction or study.

(2) "Post-secondary education" means the education or educational services offered to persons who have completed or terminated their secondary education or who are beyond the age of compulsory school attendance for the attainment of academic, professional or vocational objectives.

(3) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letters of designation, marks, appellations, series of letters, numbers or words which signify, purport or are generally taken to mean enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education through a post-secondary educational institution.

(4) "Institution" means an academic, vocational, technical, home study, business, professional or other school, college or university, or any person, association or corporation offering educational credentials or educational services but does not include any institution established and maintained under the laws of this state, another state or the government of the United States at the public expense.

(5) "Agent" means any person owning any interest in, employed by or representing a post-secondary educational institution in this or another state who, by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state in such post-secondary institution, or who offers to award educational credentials on behalf of such institution for remuneration, or who holds himself out to the residents of this state as representing a post-secondary institution for any such purpose.

(6) "Department" means the department of business regulation.

(7) "License" means written approval issued by the department to operate or to contract to operate a post-secondary institution in this state.

(8) "Permit" means written approval issued by the department to any person to act as an agent for a post-secondary educational institution.

(9) "Grant" means sell, award, confer, bestow or give.

(10) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit or encourage any person, directly or indirectly, in any form, to perform the act described.

(11) "Operate" means to establish and maintain any facility in this state for the purpose described and includes a contract with any person, association or corporation to establish and maintain such facility.

(12) "Application" means either an application for the initial issuance of a license or permit or for the renewal of a license or permit.

History: En. 75-9202 by Sec. 2, Ch. 296,
L. 1974.

75-9203. Exemptions. The following are exempt from the provisions of this act:

(1) institutions accredited by a national or regional accrediting agency recognized by either the board of public education or the board of regents of higher education and notification of such recognition having been given to the department by either board;

(2) education sponsored by a trade, business, professional or fraternal organization solely for the membership of the organization or offered without the payment of fees;

(3) avocational or recreational education and institutions offering such education exclusively;

(4) education offered by charitable or religious institutions, organizations or agencies unless such education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) schools of cosmetology possessing a valid certificate of registration issued under the provisions of chapter 8 of Title 66.

History: En. 75-9203 by Sec. 3, Ch. 296, Amendments
L. 1974; amd. Sec. 1, Ch. 211, L. 1975.

The 1975 amendment made no change in the language of this section.

75-9204. Administration. The department shall administer this act. To effect the purposes of this act, the department may request from any agency of the state, and every agency shall provide, such information as will enable the department to exercise properly its powers and perform its duties. Nothing herein shall be construed to interfere with the purpose and function of any agency of the state.

History: En. 75-9204 by Sec. 4, Ch. 296,
L. 1974.

75-9205. Advisory council. (1) There is created an advisory council. The council is composed of five (5) members appointed by the governor and two (2) ex officio members. Two (2) members shall represent the Montana Proprietary School Association, one (1) member shall represent the advisory council for vocational education, one (1) member shall represent the Montana personnel and guidance association, and one (1) member from the public at large who has no connection with education. The ex officio members shall be the superintendent of public instruction and the commissioner of higher education. Members of the council shall serve for five (5) years, except that the initial appointments shall be one (1) for three (3) years, two (2) for four (4) years, and two (2) for five (5) years.

(2) The council shall advise the department of policies, rules, regulations and procedures necessary for carrying out the provisions of this act.

(3) The council's organization, meetings, quorum and compensation are as provided in section 82A-110.

History: En. 75-9205 by Sec. 5, Ch. 296,
L. 1974.

75-9206. Powers and duties of the department. To administer this act, the department shall have the following powers and duties:

(1) to establish minimum criteria in consultation with the commissioner of higher education conforming to the minimum standards in section 7 [75-9207] of this act which applicants for a license or permit shall satisfy before a license or permit shall be issued, provided the requirements of the Administrative Procedure Act for rule-making procedures have been complied with;

(2) to receive, to investigate as it may deem necessary, and to act upon applications for a license or permit;

(3) to maintain a list of licensed institutions, of persons possessing permits and of accrediting agencies recognized under subsection (1) of section 3 [75-9203] of this act, provided that an institution and its agent exempt from this act may be included in such list upon the filing of an affidavit of exemption;

(4) to negotiate and enter into reciprocal interstate agreements with like agencies in other states if such agreements are or will affect the purposes of this act; provided, that nothing contained in such agreement shall be construed as limiting the powers and duties of the department with respect to investigating or acting upon any application for a license, or for a permit or with respect to the enforcement of any provision of this act or regulations adopted hereunder;

(5) to receive and cause to be maintained for a reasonable length of time not less than ten (10) years, copies of academic records pursuant to section 18 [75-9218] of this act;

(6) to establish with the advice of the advisory council rules, regulations and procedures necessary for the implementation of this act which, shall have the force of law; provided the requirements of the Montana Administrative Procedure Act for rule-making procedures have been complied with, and to hold hearings as it may deem advisable in developing such rules, regulations and procedures or to aid in any investigation or inquiry; and

(7) to investigate as it may deem necessary, on its own motion or on the filing of a verified complaint filed with it, any institution or person subject to or reasonably believed by the department to be subject to the provisions of this act; to subpoena any persons or documents pertaining to such investigation, which subpoenas shall be enforceable in a district court of this state; to require answers in writing under oath to questions or interrogatories propounded by the department; and to administer an oath or affirmation to any person in connection with any investigation.

History: En. 75-9206 by Sec. 6, Ch. 296,
L. 1974.

75-9207. Minimum standards. (1) In establishing the criteria required by section 6 [75-9206] of this act, the department shall observe and shall require compliance with the following minimum standards:

(a) post-secondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated, in compliance with the following minimum standards:

(i) that the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(ii) that the institution has adequate space, equipment, instructional materials and personnel to provide education of good quality;

(iii) that the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study;

(iv) that the institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and such other material facts concerning the institution and program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures required by the department; and that such information is provided to prospective students prior to enrollment;

(v) that upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed;

(vi) that adequate records are maintained by the institution to show attendance, programs, or grades, and that satisfactory standards are enforced relating to attendance, progress, and performance;

(vii) that the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of all persons upon the premises;

(viii) that the institution is financially sound and capable of fulfilling its commitments to students;

(ix) that neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any kind which are false, deceptive, misleading, or unfair;

(x) that the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character; and

(xi) that the institution has a fair and equitable cancellation and refund policy.

(b) an applicant for a permit to act as agent shall be an individual of good reputation and character and shall represent only a post-secondary educational institution which meets the minimum standards established in this section and the criteria established under section 6 [75-9206] of this act.

(c) no post-secondary educational institution may use the term "university" or "college" without authorization to do so from the department in consultation with the commissioner of higher education; provided that any institution subject to this act located within this state which used either term on January 1, 1974 may continue to do so by filing an affidavit to that effect with the department prior to January 1, 1975.

(2) Accreditation by national or regional accrediting agencies recognized by the United States Office of Education may be accepted by the department as evidence of compliance with the minimum standards established hereunder and the criteria established under section 6 [75-9206] of this act; provided, the department, after conferring with the commissioner of higher education, may require such further evidence and make such further investigation as in its judgment may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

History: En. 75-9207 by Sec. 7, Ch. 296,
L. 1974.

75-9208. Prohibition. No person, group, association or corporation, alone or in concert with others, shall:

(1) operate in this state a post-secondary educational institution unless the institution is exempt from the provisions of this act or is licensed by the department;

(2) offer instruction in, enrollment in or grant of educational credentials as or through an agent by a post-secondary educational institution not exempted from this act whether within or without the state unless the agent possesses a currently valid permit as required by this act;

(3) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a currently valid permit as required by this act;

(4) offer education or educational services or, educate or provide educational service, offer to enroll or enroll, contract or offer to contract with any person for such purpose, or offer to grant, grant or contract with any person for that purpose in this state unless the person, group, association or corporation complies with the minimum standards in section 7 [75-9207] of this act, the criteria established by the department and the rules and regulations adopted by the department;

(5) act as an agent for a post-secondary educational institution unless currently possessing a valid permit from the department.

History: En. 75-9208 by Sec. 8, Ch. 296,
L. 1974.

75-9209. License. (1) Each post-secondary educational institution not exempted from this act intending to operate or presently operating in this state shall apply to the department for a license to operate. Application shall be made on forms prescribed by the department. Each application shall be accompanied by the most recent catalog or brochure published or intended to be published by the institution. The application also shall be accompanied by evidence of payment of the fees required by this act.

(2) After review of the application and any further information required by the department, any investigation of the application which the department may deem necessary or appropriate and evidence of a surety bond as required by this act, the department shall either issue or not issue

a license to operate a post-secondary educational institution. The license shall be nontransferable and may be upon such terms and conditions as the department may require.

(3) The license shall be in a form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

- (a) date of issuance, effective date and date of expiration;
- (b) the name and address of the institution licensed;
- (c) the authority for and conditions of approval, and;
- (d) any terms or conditions required by the department.

(4) No license shall be valid for more than two (2) years and may be valid for a lesser period of time.

History: En. 75-9209 by Sec. 9, Ch. 296,
L. 1974.

75-9210. Permit. (1) Each person intending to act in this state as an agent for a post-secondary institution not exempt from the provisions of this act shall make application to the department. Application shall be made on forms prescribed by the department. Each application shall be accompanied by evidence of payment of the fees required by this act and the sworn affidavits of three (3) residents of this state as to the good character and reputation of the applicant, and shall show the name and address of the institution which the applicant intends to represent.

(2) In the event the applicant intends to represent an institution not licensed to operate in this state, the application shall be accompanied by the information required of institutions applying for such a license.

(3) After review of the application and any further information required by the department, any investigation deemed necessary or appropriate and evidence of a surety bond required by this act, the department shall issue or not issue the permit to the applicant. The permit shall be nontransferable and may be upon such terms and conditions as the department may require.

(4) The permit shall be in the form prescribed by the department and shall state in a clear and conspicuous manner at least the following information:

- (a) the date of issuance, effective date and date of expiration;
- (b) the name and address of the agent;
- (c) the name and address of the institution or institutions the agent may represent;
- (d) the authority for and conditions of approval; and
- (e) any terms or conditions required by the department.

(5) No permit shall be valid for more than two (2) years and may be valid for a lesser period of time.

History: En. 75-9210 by Sec. 10, Ch. 296,
L. 1974.

75-9211. Denial of application for license or permit. (1) If the department determines that an application is deficient under the criteria established for the issuance of a license or permit, the department shall notify the applicant in writing of that determination and the deficiencies.

(2) If the applicant requests, and the request demonstrates to the department the applicant's intention and ability to remedy the deficiencies causing the denial of the license or permit, the department may grant the applicant a reasonable period of time to take such action.

(3) If a request under subsection (2) above is not made or a request is made and is denied or the period of time granted expires without remedy of the deficiencies, the application shall be denied. The department shall notify the applicant of the denial, the reasons therefor and the opportunity of the applicant for a hearing before the department provided in section 13 [75-9213].

(4) In the event an application for a permit is denied, the department shall notify in writing the institution or institutions to be represented or represented by the applicant.

History: En. 75-9211 by Sec. 11, Ch. 296, L. 1974.

Compiler's Notes

Section 75-9213, referred to in subsection (3), was repealed by Sec. 3, Ch. 211, L. 1975.

75-9212. Revocation of license or permit. If the department has reasonable cause to believe that a holder of a license or permit issued under any provision of this act has violated or is in violation of this act or criteria established under this act, the department may revoke the license or permit as provided.

A decision respecting revocation of a license or permit shall be made after opportunity for hearing before the department of business regulation. Matters concerning the revocation of licenses or permits, hearings and judicial review will be handled as contested cases under the Administrative Procedure Act (sections 82-4201 through 82-4225, R. C. M. 1947).

History: En. 75-9212 by Sec. 12, Ch. 296, L. 1974; amd. Sec. 2, Ch. 211, L. 1975.

Amendments

The 1975 amendment substituted the provision for a hearing before the department and application of the Administrative Procedure Act for provisions specifying the procedure for revocation of a license or permit by the department.

Repealing Clause

Section 3 of Ch. 211, Laws 1975 read "Sections 75-9213 and 75-9214, R. C. M. 1947, are repealed."

Effective Date

Section 4 of Ch. 211, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved March 31, 1975.

75-9213, 75-9214. Repealed.

Repeal

Sections 75-9213 and 75-9214 (Secs. 13, 14, Ch. 296, L. 1974), relating to the

hearing and judicial review of denial or revocation of a license or permit, were repealed by Sec. 3, Ch. 211, Laws 1975.

75-9215. Civil relief. Any person claiming loss or damage as a result of any act or practice by a postsecondary institution or its agent, or both,

which act or practice violates the criteria established by the department under 75-9206 or the prohibitions in 75-9208, may sue in a court of proper jurisdiction of this state the institution or the agent, or both, and their sureties for the amount of the damage or loss and, if successful, shall be awarded, in addition to damages, court costs and reasonable attorney's fees.

History: En. 75-9215 by Sec. 15, Ch. 296, L. 1974; amd. Sec. 37, Ch. 266, L. 1977.

Amendments

The 1977 amendment deleted "or persons" after "Any person" at the beginning of the section; and made minor changes in phraseology and punctuation.

75-9216. Bonds required. (1) At the time application is made for license, the department may require the postsecondary educational institution making the application to file with the department a good and sufficient surety bond in such sum as may be determined by the department. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by the postsecondary educational institution and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be for 2 years or coterminous with the license.

(2) An application for a permit shall be accompanied by a good and sufficient surety bond in a penal sum of \$1,000. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a postsecondary educational institution, but it shall cover each agent for the institution in a penal sum of \$1,000. The bond shall be conditioned to provide indemnification to any student, enrollee, or the parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by the agent and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that the bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond shall be for 2 years or coterminous with the permit.

(3) The surety bond to be filed hereunder shall cover the period of the license or the permit except when a surety is released. A surety on any bond filed under the provisions of this section may be released after the surety has served written notice to the department 40 days prior to the release. The release does not discharge or otherwise affect any claim filed by a student or enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this act alleged

to have occurred while the bond was in effect or from an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(4) A license for an institution to operate or a permit to an agent shall be suspended by operation of law when the institution or agent is no longer covered by a surety bond as required by this section; but the department shall cause the institution or an agent, or both, to receive at least 30 days' written notice prior to the release of the surety to the effect that the license or permit shall be suspended by operation of law until another surety bond is filed in the same manner and like amount as the bond being terminated.

History: En. 75-9216 by Sec. 16, Ch. 296, L. 1974; amd. Sec. 38, Ch. 266, L. 1977.

fore or thereafter" in the third sentence of subsection (3) after "discharge or otherwise affect any claim"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment deleted "thereto-

75-9217. Fees. All fees collected pursuant to the provisions of this act shall be deposited in the general fund, and no fees collected under the provisions of this act shall be subject to refund. The fees to be collected by the department shall accompany an application for authorization to operate or for an agent's permit, in accordance with the following schedule:

- (1) the initial application fee for a license shall be fifty dollars (\$50);
- (2) the renewal fee for a license shall be twenty-five dollars (\$25);
- (3) the initial fee for permit shall be twenty-five dollars (\$25); and
- (4) the renewal fee for permit shall be ten dollars (\$10).

History: En. 75-9217 by Sec. 17, Ch. 296, L. 1974.

75-9218. Preservation of records. In the event any post-secondary educational institution now or hereafter located in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the department the original or legible true copies of all such academic records of such institution as may be specified by the department. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study; and, as a separate document, the academic record of each former student. In the event it appears to the department that any such records of an institution discontinuing its operations are in danger of being destroyed, sequestered, mislaid, or otherwise made unavailable, the department may seize and take possession of such records on its own motion, and without order of court. The department shall maintain or cause to be maintained a permanent file of such records coming into its possession.

History: En. 75-9218 by Sec. 18, Ch. 296, L. 1974.

75-9219. Enforceability of notes and contracts. (1) If the person to whom educational services are to be rendered or furnished by a post-secondary educational institution is a resident of this state at the time any con-

tract relating to payment for such services or any note, instrument, or other evidence of indebtedness relating thereto is entered into, the provisions of this section shall govern the rights of the parties to such contract or evidence of indebtedness. In such event, the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

- (a) that the law of another state shall apply;
- (b) that the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;
- (c) that another person is authorized to confess judgment on such contract or evidence of indebtedness; and
- (d) that fixes venue.

(2) No note, instrument or other evidence of indebtedness, or contract relating to payment for education or educational services shall be enforceable in the courts of this state by any post-secondary educational institution located in Montana unless the institution shall have received a license; nor by any post-secondary educational institution having an agent or agents in Montana unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had a permit at the time of their contact with such person.

(3) For the purposes of this section, "lending agency" means any post-secondary educational institution or any person, association, partnership or corporation controlling, controlled by or held in common ownership with such institution, loaning money to such institution or students thereof.

(4) Any lending agency extending credit or loaning money to any person for tuition, fees, or any charges whatever of a post-secondary educational institution for educational or other services or facilities to be rendered or furnished by said institution, shall cause any note, instrument, or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face thereof, "student loan." In the event such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

(5) Notwithstanding the presence or absence of such notation, and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit, and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the post-secondary educational institution which was to render or furnish such services or facilities, by any party to said evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished, up to the amount remaining to be paid thereon.

History: En. 75-9219 by Sec. 19, Ch. 296,
L. 1974.

75-9220. Violations—criminal—penalty. Any person, group, or entity, or any owner, officer, agent, or employee thereof, who shall willfully violate

the provisions of section 8 [75-9208], or who shall willfully fail or refuse to deposit with the department the records required by section 18 [75-9218], shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

History: En. 75-9220 by Sec. 20, Ch. 296,
L. 1974.

75-9221. Jurisdiction of courts—service of process. Any post-secondary educational institution not exempt from the provisions of this chapter, whether or not a resident of or having a place of business in this state, which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract, to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of the state, or which offers to award or awards any educational credentials to a resident of this state, submits such institution, and, if a natural person his personal representative, to the jurisdiction of the courts of this state, concerning any cause of action arising therefrom, and for the purpose of enforcement of this by injunction pursuant to section 22 [75-9222]. Service of process upon any institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside the state, in the manner prescribed by the rules of civil procedure, with the same force and effect as if the summons had been personally served within Montana. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the rules of civil procedure.

History: En. 75-9221 by Sec. 21, Ch. 296,
L. 1974.

75-9222. Enforcement—injunction. (1) The county attorney of any county in which a post-secondary educational institution or an agent thereof is found, at the request of the department or on his own motion, may bring any appropriate action or proceeding (including injunctive proceedings, or criminal proceedings pursuant to section 20 [75-9220]) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.

(2) Whenever it shall appear to the department that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this act or any of the lawful rules, regulations, or orders of the department, it may, on its own motion or on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction against such person, group, or entity, for the purpose of enjoining such violation or for an order directing compliance with the provisions of this, and all rules and orders issued by the department.

History: En. 75-9222 by Sec. 22, Ch. 296,
L. 1974.

75-9223. Severability. The provisions of this act are severable, and if any part or provision of it is held void, the holding of the court shall not affect or impair any other part or provision of this act.

History: En. 75-9223 by Sec. 23, Ch. 296, Effective Date
 L. 1974. Section 24 of Ch. 296, Laws 1974 read
 "This act is effective January 1, 1975."

CHAPTER 93—COMMISSION ON FEDERAL HIGHER EDUCATION PROGRAMS

Section

75-9301. Purpose.
 75-9302. Definitions.
 75-9303. Duties.

75-9301. Purpose. It is the purpose of this act to promote the education and welfare of the people of this state by creating an agency, which meets the requirements of federal law, to co-operate with the federal government in the establishment and administration of programs for higher education provided for by the Congress of the United States.

History: En. 75-9001 by Sec. 1, Ch. 220, meets federal requirements to administer
 L. 1974. state plans under federal higher education
 programs; and providing an effective date.

Title of Act

An act to create a commission which

75-9302. Definitions. Unless the context requires otherwise, in this act:

(1) "Commission" means the commission on federal higher education programs provided for in section 82A-512.

History: En. 75-9002 by Sec. 2, Ch. 220,
 L. 1974.

75-9303. Duties. The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, P. L. 88-204, as amended by P. L. 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, P. L. 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

History: En. 75-9003 by Sec. 4, Ch. 220, vided the act should be effective upon its
 L. 1974. passage and approval. Approved March 15,
 1974.

Effective Date

Section 5 of Ch. 220, Laws 1974 pro-

CHAPTER 94—RESIDENT STUDENT FINANCIAL ASSISTANCE PROGRAM

Section

75-9401. Short title.
 75-9402. Purpose.

- 75-9403. Definitions.
75-9404. Resident student financial assistance program created.
75-9405. Program advisory council.
75-9406. Program administration.
75-9407. Deposit of moneys.
75-9408. Administrative costs.

75-9401. Short title. This act may be cited as "The Montana Resident Student Financial Assistance Program".

History: En. 75-9401 by Sec. 1, Ch. 515, L. 1977.	Title of Act An act to establish a resident student financial assistance program.
---	--

75-9402. Purpose. The purpose of this act is to establish a program to provide financial assistance to resident Montana postsecondary students.

History: En. 75-9402 by Sec. 2, Ch. 515,
L. 1977.

75-9403. Definitions. As used in this act: (1) "resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana;

(2) "postsecondary institution" includes the units of the university system and any postsecondary institution accredited or licensed under Title 75, chapter 92, R.C.M. 1947.

History: En. 75-9403 by Sec. 3, Ch. 515,
L. 1977.

75-9404. Resident student financial assistance program created. There is a resident student financial assistance program administered by the commissioner of higher education in consultation with the program advisory council.

History: En. 75-9404 by Sec. 4, Ch. 515,
L. 1977.

75-9405. Program advisory council. (1) There is a resident student financial assistance program advisory council appointed by the board of regents.

(2) The advisory council consists of:

- (a) three practicing financial aid officers;
- (b) one chief administrator of a postsecondary educational institution;
- (c) one chief fiscal officer of a postsecondary educational institution;
- (d) one student enrolled full time at a postsecondary educational institution.

(3) No more than one member of the advisory council may be from the same postsecondary institution.

(4) The advisory council serves at the pleasure of the board of regents.

History: En. 75-9405 by Sec. 5, Ch. 515,
L. 1977.

75-9406. Program administration. In consultation with the program advisory council, the commissioner of higher education shall:

(1) adopt rules to administer the resident student financial assistance program, including the establishment of criteria for student eligibility which shall consider financial need;

(2) determine the amount of individual grants;

(3) establish procedures for fiscal control, fund accounting, and necessary reports; and

(4) apply for, receive, and administer federal and private moneys.

History: En. 75-9406 by Sec. 6, Ch. 515,
L. 1977.

75-9407. Deposit of moneys. Funds received by the commissioner of higher education for the resident student financial assistance program, including funds for the administration of this act, shall be deposited in the state treasury.

History: En. 75-9407 by Sec. 7, Ch. 515,
L. 1977.

75-9408. Administrative costs. Administration costs not provided by the federal grant that are attributable to this act shall be negotiated and charged to the individual participants.

History: En. 75-9408 by Sec. 8, Ch. 515,
L. 1977.

REVISED CODES OF MONTANA

VOLUME 5

Part 1

1977 Cumulative Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 5 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5
(PART 1) THROUGH VOLUME 557, PACIFIC
REPORTER (2ND SERIES)

Edited by

THE PUBLISHERS' EDITORIAL STAFF

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana 46202



REVISED CODES
OF
MONTANA
1974

Copyright © 1967, 1969, 1971, 1973, 1974, 1976 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1977 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 5 (Part 1)

For index see supplement to Replacement Volume 9

ENACTED IN 1967

Arts council, state, 82-3601 to 82-3609.
Bond Validating Act, 79-2001 to 79-2004.
Claims against state, assignment, 83-901 to 83-904.
Criminal investigation division, 82-414 to 82-420.
Glendive mental retardation center, 80-2310.
Juvenile correctional institutions, 80-1410 to 80-1413.
Juvenile reception and evaluation center, 80-1704.
Law enforcement, teletypewriter communication system, 82-3901 to 82-3906.
Legislative Audit Act, 79-2301, 79-2302, 79-2305, 79-2307, 79-2309 to 79-2312, 79-2314.
Planning and Economic Development Act, 82-3701, 82-3702, 82-3705, 82-3706.
Post-Attack Resource Management Act, 77-2401 to 77-2406.
Post-Enemy-Attack Continuity in Government Act, 82-3801 to 82-3809.
Public contractors delinquent in performance, 82-1927, 82-1928.
Residence of public contractor, determination, 82-1925.1.
State building program, scheduling, 78-910.
State fire marshal, promulgation of rules, 82-1202.1.
State land resources, development, 81-2401 to 81-2408.
State lands, equalization payments to counties, 81-1115 to 81-1121.

ENACTED IN 1969

After care division, department of institutions, 80-1414 to 80-1416.
Archives for preservation of records, 82-3207 to 82-3209.
Bond Validating Act, 79-2001 to 79-2004.
Contractors with state, 82-4101 to 82-4104.
Governor-elect, orderly transition of power to, 82-1311 to 82-1314.
Reconstruction of capitol, construction of supreme court building, 78-1201 to 78-1209.
Reports of state agencies to governor, 82-4001, 82-4002.
Soil and water conservation districts, 76-220 to 76-233.

ENACTED IN 1971

Administrative Procedure Act, 82-4201 to 82-4225.
Bond Validating Act, 79-2001 to 79-2004.
Capitol building and planning committee, 78-1301 to 78-1304.
Communications division in department of administration, 82-3325, 82-3329 to 82-3331.
Employment security commission buildings, 78-1011 to 78-1030.
Governor's emergency and disaster fund, 79-2501 to 79-2503.
Insurance of state property on deductible plan, 78-1102, 78-1103.
Interest on bonds and special assessments of political subdivisions, 79-2601 to 79-2603.
Interstate compact on mental health, 80-2412.
Mentally retarded persons, treatment, 80-2604.
Reorganization of state executive branch, 82A-101 to 82A-2102.
State institutions,

Alcohol or drugs, furnishing to inmates or patients as misdemeanor, 80-1418.
Removal of patient or inmate without authority as misdemeanor, 80-1417.
Veterans administration center at Fort Harrison, state jurisdiction, 83-114.

ENACTED IN 1973

Antiquities, preservation, 81-2501 to 81-2514.
Bond Validating Act, 79-2001 to 79-2004.
County attorneys, training programs for, 82-421 to 82-423.
Deposits of public funds, security for, 79-307.
Electrical inspection functions transferred to electrical board, 82A-1607.
Executive branch of government, continuing study and reports, 82-1315.

NEW LAWS IN VOLUME 5 (Part 1) (Continued)

Gas and oil royalties received from United States, portion paid into highway account, 79-211.
Gubernatorial succession, 82-1304.1 to 82-1304.5.
Hail insurance board transferred to department of agriculture, 82A-304.1.
Indian lands, assistance in development of coal on, 82-2705.
Interstate nuclear compact, 82-4401 to 82-4403.
Investment program for public funds, 79-308 to 79-311.
Land department of state, functions, 82A-1101.1.
Lieutenant governor, 82-1702.1 to 82-1702.3.
Liquor control board abolished and functions transferred, 82A-1807, 82A-1808.
Occupational health advisory committee abolished, 82A-1011.
Outfitters' council created, 82A-2005.
Personnel appeals, board of, 82A-1014.
Rules of administrative agencies, legislative review, 82-4203.1.
Sanitarian advisory council abolished, 82A-610.
Sovereign immunity abolished, 83-706.1.
State insurance plan, 82-4301 to 82-4306, 82-4308, 82-4309.
Tort claims against state or political subdivisions, 82-4310 to 82-4327, 83-701.
Tramway functions transferred, 82A-2005.
Treasurer's office in department of administration for administrative purposes, 82A-214.

ENACTED IN 1974

Administration department,

Building rental contracts, 82-3315.1 to 82-3315.8.

Definition, 82-108.1.

Athletics board, definitions, 82-301.1.

Board of institutions, powers and duties, 80-1407.1.

Bond Validating Act, 79-2001 to 79-2004.

Home guard, 77-2201 to 77-2204.

Institution residents, parental liability for costs, 80-1605, 80-1606.

Insurance for state officers and employees, legislative purpose, 82-4322.1.

Intergovernmental relations department, 82-3705.1 to 82-3705.3, 82A-901.1.

Legislative audit committee, 79-2303.1, 79-2315.

Militia, generally, 77-1601 to 77-1606.

Enlisted members, 77-1801 to 77-1804.

Military courts, 77-1901 to 77-1908.

Officers, 77-1701 to 77-1708.

Privileges and unlawful acts, 77-2101 to 77-2108.

Property, compensation, and armories, 77-2001 to 77-2007.

Reorganization of executive branch,

Adjutant general, acting adjutant, and assistants, 82A-1405, 82A-1406.

Agriculture department functions, 82A-301.1.

Board of highway appeals abolished and functions transferred, 82A-709.

Board of trustees abolished and functions transferred, 82A-222, 82A-223.

Commission on federal higher education programs, 82A-512.

Educational broadcasting commission, 82A-511.

Education department, allocations to board, intent, 82A-501.1, 82A-501.2.

Health and environmental sciences department,

Board of water and waste water operators, 82A-612.

Functions of department, 82A-601.1.

Highways department functions, 82A-701.1.

Human rights commission, 82A-1015.

Institutions department functions, 82A-801.1.

Intergovernmental relations department functions, 82A-901.1.

Livestock department functions, 82A-1301.1.

Name changes and substitutions, 82A-215 to 82A-221, 82A-613 to 82A-620, 82A-1704 to 82A-1706.

Natural resources and conservation department functions, 82A-1501.1.

Professional and occupational boards,

Athletics, 82A-1602.4.

Nursing, 82A-1602.18.

Optometrists, 82A-1602.19.

Plumbers, 82A-1602.22.

Podiatry examiners, 82A-1602.6.

NEW LAWS IN VOLUME 5 (Part 1) (Continued)

Reorganization of executive branch (Continued)

Professional and occupational boards (Continued)

Real estate, 82A-1602.23.

Water well contractors, 82A-1602.26.

Social and rehabilitation services department functions, 82A-1901.1.

State lands,

Lease by board of land commissioners, 81-103.1.

Lease of geothermal resources, 81-2601 to 81-2613.

Natural Areas Act, 81-2701 to 81-2713.

State purchases,

Data processing equipment, 82-1915.1.

Definitions, 82-1901.1.

Montana Small Business Purchasing Act, 82-1929 to 82-1940.

Vietnam veterans compensation, 77-2501 to 77-2511.

ENACTED IN 1975

Administrative procedure,

Code committee, 82-4203.2 to 82-4203.5.

Public participation in agency decisions, 82-4226 to 82-4229.

Attorney general authorized to issue confidential car registrations, 82-424.

Bond Validating Act, 79-2001 to 79-2004.

Business regulation, departmental functions, 82A-401.1.

Community affairs department, audit duties, 82-4501, 82-4515 to 82-4530.

County land planning assistance, 82-3710.

Federal Assistance Management Act, 79-2701 to 79-2708.

Livestock department,

Board of livestock, 82A-1303.1.

Pork research and marketing committee, 82A-1306.

Milk control board, intent of act, 82A-406.1.

Professional and occupational licensing,

Landscape architects board created, 82A-1602.30.

Radiologic technologists board created, 82A-1602.28.

Speech pathologists and audiologists board created, 82A-1602.31.

Warm air heating, ventilation, and air conditioning board created, 82A-1602.29.

State Budget Act, 79-1012.1 to 79-1012.5, 79-1020 to 79-1022.

Program planning and budgeting system, 79-1012.1 to 79-1012.5.

State-wide cost allocation plan, 79-1020 to 79-1022.

State institutions,

Alcohol and drug dependence, administration of federal program, and criminal laws limitations, 80-2703, 80-2723, 80-2724.

Community mental health centers, 80-2801 to 80-2806.

Department of institutions, duties, 80-2414.

Indian reservation contracts for residential and educational services, 80-1419.

Warm Springs state hospital, legislative intent, 80-2413.

Youth aftercare agreement, hearing on alleged violation, 80-1414.1.

State land, exchange for private land authorized, 81-307.

Workers' compensation judge, creation of office, 82A-1016.

ENACTED IN 1977

Administration department,

Powers of trustees of police fund transferred to, 82A-225.

Procurement duties, 82-1902.1, 82-1941 to 82-1943.

Alcohol programs, funding, 80-2725.

Arsonist, reports on admittance or release from state institutions, 80-1403.1.

Board of housing, 82A-224.

Bonds for Montana College of Mineral Science and Technology, 78-1401.

Bond Validating Act, application, 79-2005.

Court administrator, 82-510 to 82-513.

Disaster and emergency services, 77-2301.1, 77-2301.2, 77-2305.1, 77-2307.1 to 77-2307.4, 77-2312 to 77-2315.

Fire code pamphlets, 82-425, 82-426.

Fire protection services for state buildings, 82-3310.1, 82-3310.2.

NEW LAWS IN VOLUME 5 (Part 1) (Continued)

Forensic Science System Act, 82-427 to 82-447.
Payment for care in state institutions, 80-1607.
Public meetings, 82-3404 to 82-3406.
Public Records Management Act, 82-3332 to 82-3341.
Rangeland Resources Act, 76-301 to 76-307.
Regulatory agencies, legislative review, 82-4601 to 82-4609.
Reservoir selection sites, 76-118 to 76-121.
State agency, adoption of rules, 82-4204.1.
State lands, disposal of, 81-907.1.
State lands, leasing, 81-407.1.
Territorial jurisdiction, 83-115.
Tort claims against state, insurance plan, 82-4312.1, 82-4316.1, 82-4328 to 82-4335.
Veterans' and pioneers' memorial building, 78-201.1.

AMENDMENTS IN VOLUME 5 (Part 1)

Administration department, 82-109, 82-109.1 to 82-109.4, 82-110, 82-111, 82-3306 to 82-3309, 82-3314 to 82-3321, 82-3325 to 82-3325.2, 82-3329, 82-3331, 82A-204, 82A-206, 82A-207, 82A-210, 82A-212, 82A-214, 82A-218.
Administrative Procedure Act, 82-4201 to 82-4208, 82-4212, 82-4213, 82-4215 to 82-4217, 82-4219 to 82-4223, 82-4227 to 82-4229.
Agriculture department, 82A-301, 82A-304.
Arts council, 82-3603, 82-3605 to 82-3607.
Athletic board, 82-301 to 82-303, 82-305, 82-306, 82-308 to 82-310.
Attorney general's duties, 82-401.
Auditor's fiscal duties, 79-101, 79-102, 79-104, 79-108, 79-109.
Banking board, composition, 82A-407.
Bonds,
 Long-range building program bonds, 79-2201 to 79-2205.
 Validating Act, 79-2001 to 79-2004.
Budget act, 79-1001, 79-1012 to 79-1015, 79-1015.1 to 79-1015.3, 79-1016 to 79-1018.
Buildings, construction by state, 82-3314, 82-3316, 82-3317, 82-3319.
Business regulation, department of, head, 82A-401, 82A-401.1, 82A-404.
Civil defense, 77-2301 to 77-2311.
Commitment to juvenile facility, 80-2204.
Community affairs department, creation and head, 82A-901.
Conservation districts, 76-101, 76-103 to 76-111, 76-114, 76-115, 76-117.
 Assessments and funds, 76-201, 76-205 to 76-210, 76-215, 76-216, 76-222 to 76-226.
Continuity in government after enemy attack, 82-3801 to 82-3803.
Contract actions against state, 83-606.
Contractor's deposits for withdrawal of retained payments, 82-4101.
Criminal investigation division, 82-414 to 82-420.
Deposit of state funds, 79-301, 79-302, 79-306 to 79-310.
District court jurisdiction of actions against state, 83-701.
Education department, 82A-501, 82A-502, 82A-507 to 82A-509, 82A-513.
Examiners, state board of, 82-1105, 82-1117, 82-1131, 82-1131.1, 82-1133, 82-1136, 82-1147, 82-1149, 82-1150, 82-1157.
Federal assistance programs, 79-2707.
Fire marshal, state, 82-1201 to 82-1202.1, 82-1208, 82-1209, 82-1211, 82-1215, 82-1218, 82-1222, 82-1226, 82-1229, 82-1231.
Fish and game department, 82A-2001, 82A-2004, 82A-2005.
General fund warrants, 79-1101, 79-1105.
Governor, 82-1312 to 82-1314.
Grants and gifts, acceptance by state, 81-1101 to 81-1103.
Hail insurance, 82-1501, 82-1502, 82-1506, 82-1507, 82-1512, 82-1515 to 82-1517, 82-1519.
Health and environmental sciences, departmental functions, creation of board, 82A-601, 82A-601.1, 82A-604 to 82A-608.
Highways department, 82A-701, 82A-706.1.
Housing board, composition, 82A-907.
Indian affairs, co-ordinator, 82-2701 to 82-2703.
Insurance plan and tort claims, 82-4303, 82-4305, 82-4306, 82-4309 to 82-4312, 82-4318, 82-4319, 82-4323.
Intergovernmental relations department, 82A-904, 82A-905.
Interstate compact on mental health, 80-2412.
Justice, department of, 82A-1201 to 82A-1203, 82A-1205, 82A-1207, 82A-1209.

AMENDMENTS IN VOLUME 5 (Part 1) (Continued)

- Labor and industry,
 - Human rights commission, 82A-1015.
 - Personnel appeals board created, 82A-1014.
 - Workers' compensation division creation, 82A-1004.
- Legislative audit, 79-2303.1 to 79-2305, 79-2310, 79-2314, 79-2315.
- Legislative auditor, co-operation with, 79-1312.
- Lieutenant governor acting as governor, 82-1703.
- Livestock department, 82A-1303.
- Military affairs department, 82A-1401.
- Militia, generally, 77-1601, 77-1606.
 - Officers, vacating commission, 77-1705.
 - Privileges, 77-2102, 77-2106.
- Milk control board, 82A-406.
- Natural resources and conservation department, 82A-1501, 82A-1508, 82A-1509.
- Nuclear compact, 82-4402.
- Occupational licensing, 82A-1602.6 to 82A-1602.8, 82A-1602.16, 82A-1602.23, 82A-1602.30, 82A-1604, 82A-1607.
- Open meetings of public agencies, exceptions, 82-3402, 82-3403.
- Planning and economic development, 82-3701, 82-3702, 82-3705 to 82-3705.3, 82-3706, 82-3710.
- Post-Attack Resource Management Act, 77-2404.
- Printing, prices for state, 82-1149.
- Prison, 80-1903, 80-1905, 80-1906, 80-1909, 80-1912.
- Professional and occupational licensing department, 82A-1602, 82A-1602.1 to 82A-1602.3, 82A-1602.5, 82A-1602.7 to 82A-1602.17, 82A-1602.20, 82A-1602.21, 82A-1602.24, 82A-1602.27, 82A-1605, 82A-1606.
- Records of state, preservation, 82-3209.
- Reorganization of executive branch, general provisions, 82A-101 to 82A-112, 82A-115 to 82A-122.
- Reports by state agencies to governor, 82-4001, 82-4002.
- Residence in Montana, 83-303.
- Revenue department, 82A-1801, 82A-1803, 82A-1804.
- Secretary of state's duties, 82-2202, 82-2208.
- Social and rehabilitation services, veterans' affairs board, 82A-1905.
- Sovereignty and territorial jurisdiction, 83-108, 83-109.
- State capitol,
 - Building and planning committee, 78-1301, 78-1304.
 - Employment security commission building account, 78-1018, 78-1019, 78-1028, 78-1029.
 - Future building needs, 78-910.
 - Insurance, 78-1101.
- State institutions,
 - Alcohol and drug dependence programs, 80-2701, 80-2702, 80-2709, 80-2710, 80-2712, 80-2714, 80-2716, 80-2717, 80-2722 to 80-2724.
 - Appropriation of income from permanent funds, 79-601.
 - Boulder river school and hospital, 80-2310.
 - Center for the aged, 80-2501, 80-2502.
 - Child released from juvenile facility, continuing control, 80-1415.
 - Children's center, 80-2105, 80-2106.
 - Community mental health centers, 80-2802, 80-2806.
 - Deaf and blind, 80-102, 80-105, 80-107.
 - Department of institutions, 80-1401 to 80-1403, 80-1405, 80-1406, 80-1410 to 80-1416, 82A-801.1, 82A-804 to 82A-806.
 - Eastmont training center, 80-1403.
 - Expenditures, limitations on, 79-901.
 - Funds and revolving accounts, 79-602, 79-603.
 - Galen state hospital, 80-1701 to 80-1703, 80-1705.
 - Glendive mental retardation center, 80-2310.
 - Industrial activities, 80-1501.
 - Institutional industries, public sale of goods manufactured prohibited, 80-1503.
 - Institutionalized persons, payment for care of, 80-1601, 80-1603.
 - Investment income, 79-1401.
 - Juvenile facilities, 80-2202 to 80-2206, 80-2209 to 80-2213.
 - Mental retardation, 80-2604.
 - Payment for care of residents, 80-1601 to 80-1606.
 - Veterans' home, 80-1801, 80-1803.
 - Warm Springs state hospital, 80-1705, 80-2401, 80-2402.

AMENDMENTS IN VOLUME 5 (Part 1) (Continued)

State lands,

Administration of lands, 81-2302.

Agricultural and grazing leases, 81-402, 81-404, 81-405, 81-407, 81-408, 81-412 to 81-416, 81-418, 81-419, 81-421, 81-421.1, 81-422, 81-423, 81-424, 81-426, 81-428, 81-433, 81-436.

Board of land commissioners, 81-103, 81-104, 81-106.

Members and employees ineligible to purchase or lease state lands, 81-1110.

Classification of lands, 81-302.

Coal mining leases and permits, 81-501 to 81-503, 81-506, 81-508, 81-510, 81-511.

Definition of terms, 81-102.

Department of state lands, 81-105, 81-107, 81-108, 82A-1101, 82A-1104.

Officers and employees ineligible to purchase or lease state lands, 81-1110.

Development of land resources, 81-2402 to 81-2408.

Equalization payments to counties, 81-1115 to 81-1119, 81-1121, 81-1122.

Exchange of land with United States and counties, 81-304.

Exchange of timbered or burned over land, 81-2201 to 81-2205.

Grants and gifts, acceptance by state, 81-1101 to 81-1103.

Leasing, 81-405.

Location and selection of federal grants, 81-301.

Mining leases and prospecting permits, 81-601 to 81-608, 81-611 to 81-613, 81-616.

Oil and gas leases, 81-1702 to 81-1702.2, 81-1704 to 81-1706, 81-1712, 81-1716 to 81-1718, 81-1720, 81-1726, 81-1728 to 81-1731.

Preservation of antiquities, 81-2503 to 81-2513.

Public purposes, sales and easements for, 81-801 to 81-803.

Sale of lands, 81-901, 81-902, 81-905, 81-908, 81-910, 81-912, 81-915, 81-917, 81-919, 81-921, 81-923, 81-924, 81-926 to 81-928, 81-930, 81-932.

State forests, 81-1401, 81-1404, 81-1406, 81-1408, 81-1409, 81-1411 to 81-1413, 81-1415.

Stone, gravel and mineral leases and permits, 81-701, 81-702, 81-704.

Stream and lake beds, defense of state title, 81-2305.

Survey of lands, 81-2303.

Timber sales, 81-1404, 81-1406, 81-1601, 81-1604.

Water for state lands, 81-2018.

State purchases, 82-1903, 82-1904, 82-1905, 82-1908, 82-1911, 82-1914, 82-1916 to 82-1926, 82-1932.

Supreme court clerk, 82-501, 82-503, 82-505.

Supreme court, marshal, 82-1804.

Supreme court reports, 82-2002, 82-2007.

Surplus property, agency for, 82-3101, 82-3102, 82-3104 to 82-3106.

Teletype communications system for law enforcement made permanent, 82-3901 to 82-3906.

Treasurer of state, general fiscal duties, 79-201, 79-202, 79-208, 79-211.

Treasury fund structure, 79-410, 79-413 to 79-415.

Trust and legacy fund, records and payments from, 79-1212, 79-1215.

Veterans' preference in public employment, 77-501.

Veterans re-employment, 77-604, 77-707.

Vietnam veterans' compensation, 77-2502, 77-2506.

MONTANA REVISED CODES

TITLE 76—SOIL AND WATER CONSERVATION

Chapter

1. State conservation districts law, 76-101, 76-103 to 76-111, 76-114, 76-115, 76-117 to 76-121.
2. Conservation district assessments and funds, 76-201, 76-205 to 76-210, 76-215, 76-216, 76-220 to 76-233.
3. Rangeland Resources Act, 76-301 to 76-307.

CHAPTER 1—STATE CONSERVATION DISTRICTS LAW

Section	
76-101.	Short title.
76-103.	Definitions.
76-104.	Duties of department.
76-105.	Creation of conservation districts.
76-106.	Election of supervisors for each district.
76-107.	Appointment, qualifications, and tenure of supervisors.
76-108.	Powers of districts and supervisors.
76-109.	Adoption of land-use regulations.
76-110.	Performance of work under the regulations by the supervisors.
76-111.	Board of adjustment.
76-114.	Discontinuance of districts or a part of the district.
76-115.	Disposition of funds.
76-117.	Change of district name—division and combination of districts.
76-118.	Selection and acquisition of water storage sites by conservation districts.
76-119.	Funding of storage reservoirs.
76-120.	Purposes of off-stream storage.
76-121.	Disposition of excess water.

76-101. Short title. This act may be known and cited as "the State Conservation Districts Law."

History: En. Sec. 1, Ch. 72, L. 1939; amd. Sec. 1, Ch. 73, L. 1961; amd. Sec. 1, Ch. 431, L. 1971.	Amendments The 1971 amendment deleted "Soil and Water" before "Conservation."
---	--

76-103. Definitions. Unless the context requires otherwise, in this act:

- (1) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;
- (2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this act;
- (3) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15;
- (4) "Board" means the board of natural resources and conservation provided for in section 82A-1509;

(5) "Petition" means a petition filed under subsection (1) of section 76-105 for the creation of a district;

(6) "Nominating petition" means a petition filed under section 76-106 to nominate candidates for the office of supervisor of a soil conservation district;

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(8) and (9) * * * [Same as parent volume.]

(10) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality or other entity who holds title to, or is in possession of, lands lying within a district organized under this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

(12) "Qualified elector" means a qualified elector as defined in Title 23, R. C. M. 1947.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974.

Amendments

The 1967 amendment inserted "municipality or other entity" after "corporation" in subdivision (10).

The 1971 amendment deleted "soil and water" before "conservation" in subdivision (1); substituted "commission" for

"committee" twice and deleted "soil" before "conservation" in subdivision (3); deleted "soil" before "conservation" in subdivision (5); added subdivision (12); and made a minor change in style.

The 1974 amendment deleted definitions of "Commission," "State conservation commission," and "State"; inserted definitions of "Department" and "Board"; and made minor changes in phraseology, punctuation and style.

76-104. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

(1) Offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) Keep the supervisors of each of the several districts informed of the activities and experiences of all other districts, and facilitate an interchange of advice and experiences between the districts and co-operation between them;

(3) Co-ordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) Secure the co-operation and assistance of the United States and of agencies of this state, in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts, and encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974.

Amendments

The 1967 amendment substituted "twenty dollars" for "five dollars" in subsection C.

The 1969 amendment, in the fourth sentence of subsection A, deleted "farmer" before "members" near the beginning, substituted "Montana association of soil and water conservation districts" for "Montana soil conservation districts association," deleted "farmer" before "member" and "members" in the sixth and eighth sentences, respectively; in subsection B, deleted a former fourth sentence reading, "It shall be supplied with suitable office accommodations at the state college at Bozeman, Montana, and shall be furnished with the necessary supplies and equipment"; and, in the third sentence in sub-

section C, deleted "farmer" before "members."

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in four instances; substituted "commission" for "committee" throughout the section; deleted "at Bozeman, Montana" after "experiment station" and after "extension service" in the third sentence of subsection A; deleted "soil and water" before "conservation districts" in the fourth sentence of subsection A; deleted "soil" before "conservation" in the sixth sentence of subsection A and in subdivisions D (1), (3), and (5); substituted "commissioners" for "committeemen" in the second sentence of subsection C; and made a minor change in style.

The 1974 amendment deleted subsections A through C relating to creation of the state conservation commission (for prior law, see parent volume); substituted "department" for "state conservation commission" in the first sentence (formerly subsection D); and made minor changes in phraseology, punctuation and style.

76-105. Creation of conservation districts. (1) Any 10 qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition. The petition shall set forth:

- (a) the proposed name of the district;
- (b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;
- (c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but shall be considered sufficient if generally accurate;
- (d) a request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(2) Where more than one petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions.

(3) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings

taken under this act; and upon all questions relevant to those inquiries. All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard. If it appears to the board after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the board shall adjourn the hearing and the department shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district, and the further hearing shall be held by the department. After the hearing, if the board determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available to the department or the board, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district. In making the determinations and in defining the boundaries, the board shall consider the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-102. The territory to be included within the boundaries need not be contiguous. If the board determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made thereon.

(4) After the board has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this act is administratively practicable and feasible. To assist the board in the determination of this administrative practicability and feasibility, the department shall, within a reasonable time after entry of the board's finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying

in the county(ies) of _____, _____, and _____” and “Against creation of a conservation district of the lands below described and lying in the county(ies) of _____ and _____” shall appear, with a square before each proposition and a direction to insert an “X” mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board. All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

(5) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum. No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

(6) The department shall publish the result of the referendum, and the board shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner hereinafter provided. In making its determination, the board shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-102; however, the board may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district have been cast in favor of the creation of the district.

(7) If the board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided hereinafter, as the initial governing body of the district. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(a) The two appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth:

(i) that a petition for the creation of the district was filed with the department pursuant to this act, that the proceedings specified in this act were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act, and that the board has appointed them as supervisors;

(ii) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(iii) the term of office of each of the supervisors;

(iv) the name which is proposed for the district; and

(v) the location of the principal offices of the supervisors of the district.

(b) The application shall be subscribed and sworn to by each of the supervisors. The application shall be accompanied by a statement by the department, which shall certify that a petition was filed, notice issued, and hearing held as provided in this act; that the board determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district; and that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that thereafter the board determined that the operation of the proposed district is administratively practicable and feasible. The statement shall also set forth the boundaries of the district as they have been defined by the board.

(8) The secretary of state shall examine the application and statement, and if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, he shall certify that fact to the board, which shall thereupon submit to the secretary of state a new name for the district which is not subject to such defects. Upon receipt of the new name free of such defects, the secretary of state shall record the application and statement with the name so modified in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic. The secretary of state shall make and issue to the supervisors without cost a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the board, but they may not include any area included within the boundaries of another conservation district.

(9) After 6 months have expired from the date of entry of a determination by the board that operation of a proposed district is not admin-

istratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken thereon in accordance with this act.

(10) Petitions for including additional territory within an existing district may be filed with the department, and the proceedings herein provided for in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion is less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

(11) In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this act upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

(12) The conservation district is authorized to divide the unincorporated area of the district into five supervisor areas.

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971; amd. Sec. 90, Ch. 253, L. 1974; amd. Sec. 1, Ch. 18, L. 1977.

Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection (1) and the last sentence of subsection (11), for "occupiers of lands lying" in the last sentence of subsection (4) and the last sentence of subsection (6), for "occupiers of land" in the second sentence of subsection (3), for "land occupiers" in the last sentence of subsection (6) and the third sentence of subsection (11); substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "commission" for "committee" throughout the section; deleted "soil and water" before "conservation district" throughout the section; substituted "majority" for "sixty-five (65) per cent" in the proviso to subsection (6) and in the last sentence of the

second paragraph of subsection (8); deleted from the end of subsection (4) a former last sentence reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in phraseology.

The 1974 amendment substituted "department" or "board" for "state conservation commission" and "commission" throughout the section; inserted "the board approve the organization of" in the first sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted "first" and "initial" in the first sentence of subsection (7); redesignated the first sentence of former subsection (8) with subdivisions (a) through (e) as subdivision (7)(a) with subdivisions (i) through (v); redesignated the second through fourth sentences of former subsection (8) as subdivision (7)(b); redesignated former subsections (9) through (12) as subsections (8) through (11); added subsection (12); and made minor changes in phraseology, punctuation and style.

76-106. Election of supervisors for each district. (1) Within 30 days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the registrar, as defined in Title 23, R.C.M. 1947, to nominate candidates for supervisors of the district. A nominating petition may not be accepted by

the registrar unless it is subscribed by 10 or more qualified electors within the boundaries of the district, or supervisor areas thereof, wherein the nominee resides. Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor. If more than six candidates are nominated, the registrar shall give due notice of a nominating election to be held for the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election. In the general election, the names of all persons nominated by petition (if six or fewer) or by election shall be printed, arranged in a rotating order of the surnames, as provided under 23-3511, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the voter's preference. All qualified electors within the district are eligible to vote in the election. The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district. The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judges in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are nominated. The election judges, clerks, and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election and tabulate the results of such election in the manner provided for by the general election laws of the state.

(2) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections. Nominations for the election of supervisors shall be made as provided under subsection (1) except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971; amd. Sec. 91, Ch. 253, L. 1974; amd. Sec. 2, Ch. 18, L. 1977.

Amendments

The 1971 amendment deleted "soil" before "conservation district" in the first sentence; substituted "state conservation commission" for "state soil conservation committee" in the first sentence; substituted "commission" for "committee" throughout the section; substituted "qualified electors" for "occupiers of land lying" in the third and seventh sentences, and for "land occupiers" in the fourth sentence; deleted the former eighth sentence reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in style.

The 1974 amendment substituted "department" for "state conservation commission" and "commission" throughout the

section; and made minor changes in phraseology, punctuation and style.

The 1977 amendment designated the former section as subsection (1); substituted "registrar" for "department" throughout the section; inserted "as defined in Title 23, R. C. M. 1947" in the first sentence of subsection (1); deleted a former second sentence reading "The department may extend the time within which nominating petitions may be filed"; added "or supervisor areas thereof, wherein the nominee resides" at the end of the second sentence of subsection (1); substituted the fourth and fifth sentences of subsection (1) for "The department shall give due notice of an election to be held for the election of three (3) supervisors for the district"; substituted "In the general election, the names of all persons nominated by petition (if six or fewer) or by election" in the sixth sentence of subsection (1) for "The names of all nominees on behalf of

whom the nominating petitions have been filed within the time herein designated"; substituted "a rotating order of the surnames, as provided under 23-3511" in the sixth sentence of subsection (1) for "the alphabetical order of the surnames"; substituted the last two sentences of subsection (1) for "The department shall pay all the expenses of the election, shall supervise the conduct thereof, shall prescribe rules governing the conduct of the election and the determination of the eligibility of votes therein, and shall publish the results thereof"; added subsection (2); and made minor changes in punctuation and style.

Compliance with Act

Section 4, Ch. 18, Laws 1977, read "For the purposes of bringing existing districts into compliance with this act by the time of the 1978 general elections the terms of office for all supervisors shall expire upon passage and approval of this act. However, each supervisor shall remain in office until his successor has been elected and has qualified in accordance with this act. For purposes of the 1978 general election three supervisors shall be elected for a 4-year term and the remaining two supervisors elected for a 2-year term. No action or undertaking of a district may be invalidated or voided for failure to comply with the amendatory provisions of this act prior to January 1, 1979."

76-107. Appointment, qualifications, and tenure of supervisors. (1)

The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five or seven supervisors, elected or appointed as provided herein.

(2) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, the board of supervisors, in addition to the five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two additional supervisors. The term of office of the appointed supervisors shall be 3 years.

(3) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

(4) The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be 4 years, except that the supervisors who are first appointed by the department shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors constitute a quorum, and the concurrence of a majority in any matter within their duties is required for its determination. A supervisor may not receive compensation for his services, but he is entitled to expenses, including travel expenses, as provided for in 59-538, 59-539, and 59-801, incurred in the discharge of his duties.

(5) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services

as they may require or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they consider proper. The supervisors shall furnish to the department copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they adopt or employ and such other information concerning their activities as may be required in the performance of their duties under this act.

(6) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. A supervisor may be removed by the board, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

(7) The supervisors may invite the governing body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973; amd. Sec. 92, Ch. 253, L. 1974; amd. Sec. 52, Ch. 439, L. 1975; amd. Sec. 3, Ch. 18, L. 1977.

Compiler's Notes

The provisions that the term of office of appointed supervisors be 3 years (in the last sentence of subsection (2)) and that the term of office of each supervisor be 4 years (in the second sentence of subsection (4)), so appeared in the 1977 act.

Section 4 of Chapter 18, Laws of 1977, provided for the expiration of present directors' terms of office and for the election of directors in 1978 to bring existing districts into compliance with 1977 amendment.

Amendments

The 1967 amendment inserted "if there are no incorporated municipalities within the boundaries of said district" in the first paragraph; inserted second and third paragraphs identical with the present second and third paragraphs, except that "soil and water" preceded "conservation district"; and inserted "an elected" before "supervisor" in the third and fourth sentences of the fourth paragraph.

The 1971 amendment deleted all the insertions made by the 1967 amendment; inserted "or seven (7)" and "or appointed" in the first paragraph; substituted "state

conservation commission" for "state soil conservation committee" in the last sentences of the third and fourth paragraphs, now the fifth and sixth paragraphs; and made minor changes in style and phraseology.

The 1973 amendment reinserted all of the language inserted by the 1967 amendment except the words "soil and water" before "conservation district."

The 1974 amendment inserted numerical subsection designations; substituted "department" for "state conservation commission" in subsection (5); substituted "board" for "state conservation commission" in subsection (6); and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred in the discharge of his duties" at the end of subsection (4) for "traveling expenses necessarily incurred in the discharge of his duties."

The 1977 amendment substituted "4 years" near the beginning of the second sentence of subsection (4) for "three (3) years"; inserted "by the department" in the second sentence of subsection (4); substituted "terms of 2 years" in the second sentence of subsection (4) for "terms of one (1) and two (2) years, respectively"; substituted "governing body" near the beginning of subsection (7) for "legislative body"; and made minor changes in phraseology, punctuation and style.

76-108. Powers of districts and supervisors. A. A conservation district organized under the provisions of this act shall constitute a govern-

mental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, R. C. M. 1947, on lands owned or controlled by this state or any of its agencies with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) and (5) * * * [Same as parent volume.]

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water;

(7) * * * [Same as parent volume.]

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion, and for flood prevention, and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) to (11):*** [Same as parent volume.]

(12) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire an indebtedness or lien that may exist against the district or property thereof;

(13) To fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities and materials furnished or provided. Revenues from these sources may be expended in carrying out the purposes and provisions of this act;

(14) To cause taxes to be levied in the same manner provided for in Title 76, chapter 2, R. C. M. 1947, for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided.

(15) To apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

B. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971; amd. Sec. 2, Ch. 75, L. 1975; amd. Sec. 1, Ch. 395, L. 1977.

Amendments

The 1969 amendment designated the first paragraph as subsection A; rewrote subdivision (2), for previous text of which see parent volume; in subdivision (3), inserted "R. C. M. 1947" after "section 76-102" and substituted "or" for "of" before "the necessary rights"; in subdivi-

sion (6), inserted "and" before "disposal of water"; inserted present subdivisions (12) through (14); and designated former subdivision (12) as subsection B.

The 1971 amendment deleted "soil" before "conservation" at the beginning of subsection A.

The 1975 amendment added subdivision A(15); and made a minor change in punctuation.

The 1977 amendment inserted "water quality as it pertains to saline seep" near the beginning of subdivision A(1).

76-109. Adoption of land-use regulations. (A) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum.

(B) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed

ordinance No. _____, prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. _____, prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert and [an] "X" mark in the square before one (1) or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All qualified electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(C) The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

(D) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented or repealed, except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. to 4. * * * [Same as parent volume.]

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in section 76-102.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, grazing and cropping programs, and tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of

land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "an" in the fourth sentence of subsection (B).

Amendments

The 1971 amendment substituted "water" for "soil" in the first sentence of subsection (A); deleted "soil" before "erosion" at the end of the first sentence of subsection (A); substituted "qualified electors" for "occupiers of lands lying" in the

last sentence of subsection (A), for "occupiers of lands within" in the sixth sentence of subsection (B), and for "occupier of land" in the first sentence of subsection (D); deleted the former seventh sentence of subsection (B) reading, "Only such land occupiers shall be eligible to vote"; inserted "and water" before "resources" in subdivision (D) 5; deleted "soil" before "erosion" in subdivision (D) 5; deleted "lying" after "occupiers of land" in the last sentence of the final paragraph of subsection (D); and made a minor change in punctuation.

76-110. Performance of work under the regulations by the supervisors.

(1) * * * [Same as parent volume.]

(2) Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in any ordinance adopted in accordance with the provisions of section 76-109 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands, and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court of the county in which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservances tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the defendant.

(3) * * * [Same as parent volume.]

(4) The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per cent (5%) a year from the defendant. In all cases where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(5) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per cent (5%) a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "land occupier" after "the failure of the defendant"

near the middle of subsection (2); substituted "defendant" for "occupier of such land" at the end of subsection (2) and at the end of the first sentence of subsection (4); and made minor changes in phraseology.

76-111. Board of adjustment. (1) Where the supervisors of a district adopt an ordinance prescribing land-use regulations in accordance with section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. The board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each board of adjustment shall be appointed by the department, with the advice and approval of the supervisors of the district for which the board has been established, and may be removed by the department, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, the hearing to be conducted jointly by the department and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the board of natural resources and conservation, employees of the department, and the supervisors of the district are ineligible to appointment as members of the board of adjustment. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars (\$4) per day for time spent on the work of the board, in addition to expenses, including travel expenses, as provided for in sections 59-538, 59-539, and 59-801, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

(2) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this act, and with any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The

board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

(3) Any qualified elector may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of the regulations to the lands occupied by the petitioner. Copies of the petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the department. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of the hearing to be given. The supervisors of the district and the department are entitled to appear and be heard at the hearing. A qualified elector within the district who objects to the authorizing of the variance prayed for may intervene and become a party to the proceedings. A party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at the hearing the board determines that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record that determination and shall make and record findings of fact as to the specific conditions which establish the great practical difficulties or unnecessary hardship. Upon the basis of the findings and determination, the board may order a variance from the terms of the land-use regulations, in their application to the lands of the petitioner, that will relieve the great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations are observed, the public health, safety, and welfare secured, and substantial justice done.

(4) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district, or an intervening party, may obtain a review of the order in any district court of the county, in which the lands of the petitioner lie, by filing in the court a petition praying that the order of the board be modified or set aside. A copy of the petition shall immediately be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon the filing, the court shall cause notice thereof to be served upon the parties, and the court has jurisdiction of the proceedings and of the questions determined or to be determined therein, and may grant such temporary relief as it deems just and proper, and make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. A contention that is not urged before the board may not be considered by the court unless the failure or neglect to urge the contention is excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by

evidence, are conclusive. If a party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that the evidence is material and that there are reasonable grounds for the failure to produce the evidence in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file the modified or new findings, which, if supported by evidence, are conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court is exclusive and its judgment and decree are final, except that they are subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971; amd. Sec. 93, Ch. 253, L. 1974; amd. Sec. 53, Ch. 439, L. 1975.

Amendments

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "qualified elector" for "land occupier" in the first sentence, and for "occupiers of land lying" in the fifth sentence, of subsection C; and made minor changes in style and punctuation. sentence, of subsection (3); and made minor changes in style and punctuation.

The 1974 amendment substituted "department" for references to the state conservation commission or its chairman throughout the section; substituted "board of natural resources and conservation" and "employees of the department" in the fifth sentence of subsection (1) for "state conservation commission"; and made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted "as provided for in sections 59-538, 59-539, and 59-801" after "travel expenses" near the end of subsection (1); and made minor changes in phraseology.

76-114. Discontinuance of districts or a part of the district. (1) At any time after 5 years after the organization of a district under this act, any 10 qualified electors within the boundaries of the district may file a petition with the department, praying that the board terminate the operations of the district or a part of the district and discontinue the existence of the district or that part of the district. The department may conduct such public meetings and public hearings upon the petition as are necessary to assist it and the board in the consideration thereof.

(2) Within 60 days after the petition has been received by the department it shall give due notice of the holding of a referendum, and shall supervise the referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the conservation district or part of the district to be here inserted)" and "Against terminating the existence of the (name of the conservation district or part of the district to be here inserted)" shall appear, with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district or a part of the district. All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters relative thereto shall invalidate the referendum or the result

thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

(3) (a) In the case of petitions for discontinuance of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

(b) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition. If the board determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued it shall record that determination and shall certify the determination to the supervisors of the district.

(4) In making the determination the board shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district or part of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in section 76-102; however, the board may not determine that the continued operation of the district or part of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district or part of the district.

(5) Upon receipt from the department of a certification of the board that the board has determined that the continued operation of the district or part of the district is not administratively practicable and feasible, pursuant to this section, the supervisors shall immediately proceed to terminate the affairs of the district or part of the district. The supervisors shall dispose of all property belonging to the district or part of the district at public auction and shall pay over the proceeds of the sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district or part of the district, and shall transmit with the application the certificate of the board, setting forth the determination of the board that

the continued operation of the district or part of the district is not administratively practicable and feasible. The application shall recite that the property of the district or part of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under this section, all ordinances and regulations theretofore adopted and in force within the district or in that part of the district are void. All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts if the total district is discontinued. In this case the department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise, as the supervisors of the district would have had. The dissolution does not affect the lien of any judgment entered under section 76-110, nor the pendency of an action instituted under that section, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971; amd. Sec. 94, Ch. 253, L. 1974; amd. Sec. 5, Ch. 18, L. 1977.

Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection (1), for "occupiers of lands lying" in the second sentence of subsection (2), for "occupiers of lands" near the beginning of subsection (4), and for "land occupiers" near the middle of subsection (4); substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "commission" for "committee" throughout the section; deleted "soil" before "conservation" twice in the first sentence of subsection (2); and deleted a former third sentence of subsection (2) reading, "Only

such land occupiers shall be eligible to vote."

The 1974 amendment substituted "department" or "board" for "state conservation commission" and "commission" throughout the section; and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted references to "a part of the district" throughout the section; designated existing subsection (3) as subdivision (3)(a); inserted "In the case of petitions for discontinuance of a district" at the beginning of subdivision (3)(a); inserted subdivision (3)(b); added "if the total district is discontinued" at the end of the third sentence of subsection (6); inserted "In this case" at the beginning of the fourth sentence of subsection (6); and made minor changes in phraseology and style.

76-115. Disposition of funds. (1) Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the department among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection (2) of this section. All moneys allocated to a district by the department shall be available to the supervisors of the district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by the district.

(2) Seventy-five per cent (75%) of all moneys which may be appropriated to pay the administrative and other expenses of conservation districts shall be allocated by the department among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five per cent (25%) of the moneys shall be allocated by the department among the districts on such basis of allocation as is fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of the moneys, the department shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

(3) The department shall submit to the department of administration, on or before the first (1st) day of August of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the department and to the districts; and the estimates of the department as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971; amd. Sec. 95, Ch. 253, L. 1974.

Amendments

The 1971 amendment deleted "soil" before "conservation districts" in the first sentences of subsections A and B; substituted "commission" for "committee" throughout the section; substituted "state conservation commission" for "state soil

conservation committee" in the first sentences of subsections B and C; and made minor changes in style and phraseology.

The 1974 amendment substituted "department" for "state soil conservation commission" and "commission" throughout the section; substituted "department of administration" for "state board of examiners" in subsection (3); and made minor changes in phraseology, punctuation and style.

76-117. Change of district name—division and combination of districts.

(1) Petitions for changing the name of a district organized under this act may be filed with the department. The petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the department determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of that determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of the certificate, the

supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the department for the division of any district or the combination of any two (2) or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of these actions may be initiated by the filing of a single petition with the department. The petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The department shall prescribe the form for the petition. Upon the filing of the petition, the department shall within thirty (30) days give due notice of public hearing upon the petition. All qualified electors within the affected districts, and all other interested parties, are entitled to attend the hearing and be heard. After the hearing, the board of natural resources and conservation upon the record of the hearing shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making the determination the board shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the board determines that the proposed division or combination, or division and combination, is administratively practicable and feasible, the board shall effect the proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of the districts. If the determination is in the negative the board shall make and record that determination and shall deny the petition. After six (6) months from the denial of the petition, a new petition may be filed.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of the allocation shall be filed with the department within thirty (30) days after the notification of the board's determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, the allocation, it shall be made by the department after such hearing as the department considers necessary, and with due regard for the standards set out in this paragraph for making the allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971; amd. Sec. 96, Ch. 253, L. 1974.

Amendments

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in the first sentence of subsection (1); substituted "com-

mission" for "committee" throughout the section; substituted "qualified electors" for "occupiers of lands" in the sixth sentence of subsection (2), and for "land occupiers" in the first sentence of subsection (4); and made minor changes in phraseology and style.

The 1974 amendment substituted "department," "board of natural resources and conservation," or "board" throughout

the section for "state conservation commission" and "commission"; and made minor changes in phraseology, punctuation and style.

76-118. Selection and acquisition of water storage sites by conservation districts. (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

History: En. 76-118 by Sec. 1, Ch. 418, L. 1977.

the construction of reservoirs by conservation districts and to provide for the sale of water from such reservoirs in excess of the needs of prior appropriators according to an ordering of certain beneficial uses.

Title of Act

An act to provide for the selection and acquisition of off-stream storage sites and

76-119. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department of natural resources and conservation shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

History: En. 76-119 by Sec. 2, Ch. 418, L. 1977.

76-120. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

History: En. 76-120 by Sec. 3, Ch. 418, L. 1977.

76-121. Disposition of excess water. (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-109 according to need and beneficial use.

History: En. 76-121 by Sec. 4, Ch. 418, L. 1977.

Separability Clause

Section 5 of Ch. 418, Laws 1977 read

"If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applica-

tions, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 2—CONSERVATION DISTRICT ASSESSMENTS AND FUNDS

Section

- 76-201. Notice of organization of district filed.
- 76-205. Division between counties of money to be raised by regular and special assessment.
- 76-206. Expenses to be covered by estimate.
- 76-207. Regular and special assessments.
- 76-208. Maximum regular assessment.
- 76-209. Levy of regular and special assessment.
- 76-210. Computation of rate of assessment.
- 76-215. Depository of district funds.
- 76-216. Receipt and crediting of district funds—responsibility on bond.
- 76-220. District authorized to borrow money—pledging credit of district or issuance of warrants—levy for repayment—limitation on warrants.
- 76-221. Investment of funds in interest-bearing securities authorized—conversion into cash.
- 76-222. Investment of unneeded surplus funds—deposit of funds with depository or bank—surety bond or pledge of securities to ensure payment of deposit.
- 76-223. Issuance of bonds authorized—other financing—special elections.
- 76-224. Establishment of project areas upon petition—special assessments.
- 76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation.
- 76-226. Protests against proposed projects or creation of project area.
- 76-227. Description of work or project area.
- 76-228. District area included in project area—administration of affairs.
- 76-229. Estimates of expenses of project area—financing by assessments.
- 76-230. Federal authority unaffected.
- 76-231. Special assessments a lien.
- 76-232. Assessments unaffected by misnomers and mistakes relating to ownership.
- 76-233. Duty to maintain improvements.

76-201. Notice of organization of district filed. The supervisors of a conservation district shall, within ten (10) days after the creation of the district, or within thirty (30) days after the effective date of this act, cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971.

Amendments

The 1969 amendment inserted "and water" before "conservation district."

The 1971 amendment deleted "soil and water" before "conservation district."

76-205. Division between counties of money to be raised by regular and special assessment. If the district lies in more than one county the supervisors of the district shall divide the amount of the estimate of the regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county. The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969.

regular assessment" after "amount of the estimate" in the first sentence; and added the last sentence.

Amendments

The 1969 amendment inserted "of the

76-206. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969.

mated cost of repairs to and maintenance of property and works and estimated expenses of any action or proceeding to which district was or might be a party, including the cost of employing engineers and attorneys;

Amendments

The 1969 amendment deleted provisions requiring that estimate be sufficient for costs of work during ensuing year, esti-

76-207. Regular and special assessments. Assessments levied pursuant to this act shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "and special" before "assessments."

76-208. Maximum regular assessment. The regular assessment in any one (1) year shall not exceed one and one-half ($1\frac{1}{2}$) mills on the dollar of total taxable valuation of real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. The valuation shall be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971.

mill" to "one and one-half ($1\frac{1}{2}$) mills" and substituted "district" for "county" in the first sentence.

Amendments

The 1969 amendment increased the assessment from "one-half ($\frac{1}{2}$) of one (1)

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" at the end of the first sentence.

76-209. Levy of regular and special assessment. The board of county commissioners of each county in which there lies any portion of the district may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. It shall be known as the "_____ (name of district) conservation district regular assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

The board of county commissioners of each county in which there lies any portion of a project area may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the project area, not to exceed three (3) mills. It shall be known as "_____ (name of the project area) special assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971.

Amendments

The 1969 amendment substituted "district" for "county" after "real property within the" in the first sentence; in the second sentence, substituted "soil and water conservation district regular assessment" for "soil conservation district as-

essment" and deleted a proviso at the end reading, "provided, however, that income from the levy of the assessment provided in this act for any single district shall not exceed one thousand dollars (\$1000)"; and added the second paragraph.

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" at the end of the first sentence of the first paragraph.

76-210. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting fifteen per cent (15%) for anticipated delinquencies from the total assessed value of the taxable real property in the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of one hundred dollars (\$100) it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971.

Amendments

The 1969 amendment substituted "dis-

trict" for "county" and inserted "that" before "within incorporated cities" in the first sentence.

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" in the first sentence.

76-215. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "county tax" before "funds."

76-216. Receipt and crediting of district funds—responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this act, of the money of the district held by him.

History: En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "county tax" before "money of the district" in the first sentence.

76-220. District authorized to borrow money—pledging credit of district or issuance of warrants—levy for repayment—limitation on warrants. If after the levy of the annual assessments for the current year, the board finds that because of some unusual or unforeseen cause, funds raised through the collection of the assessments, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the works therein, the board may borrow additional funds needed to an amount not to exceed fifty cents (\$.50) per acre for the lands within

the district and may pledge the credit of the district for the payment of the same, or the board may request the county commissioners to issue and register warrants in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants shall not exceed ninety per cent (90%) of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969.

76-221. Investment of funds in interest-bearing securities authorized—conversion into cash. The board of supervisors shall have the power and authority to direct the investment of funds in a sinking fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But, all such securities shall be converted into cash in time to meet the principal on the bonds, payable from such sinking fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969.

76-222. Investment of unneeded surplus funds—deposit of funds with depository or bank—surety bond or pledge of securities to ensure payment of deposit. The board of supervisors of a conservation district may invest any surplus funds of the district, except county tax funds, not needed for immediate use in the operations of the district or its activities, or to pay bonds or coupons, or to meet current expenses, in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States, or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board, and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit, or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in, to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969;
amd. Sec. 18, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "soil and water" before "conservation district" near the beginning of the first sentence.

76-223. Issuance of bonds authorized—other financing—special elections. Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided for by this act for the cost of works. The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. The notice of the election and the election itself shall be carried out in accordance with section 76-225 of this act. If from the returns of the election it appears that the majority of votes cast at such election were in favor of and assented to the incurring of the indebtedness, then the board of supervisors may, by resolution,

provide for the issuance of such bonds. The authorization of such undertaking, the form, and content shall be carried out in accordance with section 11-2404 of the Municipal Revenue Bond Act of 1939. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of sections 11-2406, 11-2410, and 11-2414 of the Municipal Revenue Bond Act of 1939. Any bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969;
amd. Sec. 19, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "section 76-225" for "section 18 [17]" in the third sentence.

76-224. Establishment of project areas upon petition—special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, or by a co-operative grazing association or other special purpose district, or by more than fifty per cent (50%) of the qualified electors affected thereby the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one (1) or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969;
amd. Sec. 20, Ch. 431, L. 1971.

for "village"; substituted "qualified electors" for "freeholders"; and made minor changes in punctuation and style.

Amendments

The 1971 amendment substituted "town"

76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation. Upon receipt of a petition to establish a project area the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition. Prior to the hearing the board or boards of supervisors shall make, or cause to be made, an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings. The report shall be presented and read at the hearing on the petition. If the board, or boards, of supervisors finds that it is not feasible, desirable or practical to establish the proposed project area it shall make an order denying the petition and shall state therein its reasons for so doing. If, however, the board finds that the project is desirable, proper and necessary, it shall grant the petition, establish the boundaries of the proposed project area and give due notice of an election to be held in the proposed area for the purpose of determining whether or not the project area shall be created. The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voters may favor or oppose creation of the project area. No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 23, R. C. M. 1947, and resides within

the boundaries of the proposed project area and the county in which he proposes to vote. If the majority of the votes cast at the election are in favor of creating a project area, the board, or boards, of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "and excluding those lands that will not be so benefited" after "proposed project area"

in the fifth sentence; substituted the reference to Title 23 in the seventh sentence for "the general laws of the state"; substituted "resides" for "is the owner of taxable real property situated" in the seventh sentence; and made a minor change in phraseology.

76-226. Protests against proposed projects or creation of project area.

At any time within fifteen (15) days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him. At the public hearing on the petition the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive; except when owners or [of] more than fifty per cent (50%) of the land in the proposed project area protest the project. If owners of more than fifty per cent (50%) of the land protest the project, no further action may be taken for a period of six (6) months from the date of the hearing after which a new petition may be filed.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971.

Compiler's Notes

The bracketed word "of" near the end of the section has been inserted by the compiler.

Amendments

The 1971 amendment deleted "soil and water" before "conservation" in the second sentence; and made minor changes in style and punctuation.

76-227. Description of work or project area. In all resolutions, notices, orders and determinations, it shall be sufficient to briefly describe the work or the project area, or both.

History: En. Sec. 19, Ch. 291, L. 1969.

76-228. District area included in project area—administration of affairs. A project area may include a part or all of any district or may include areas in more than one (1) district. The affairs of a project area shall be administered by the board, or boards, of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969.

76-229. Estimates of expenses of project area—financing by assessments. When a project area has been created, the board, or boards, of

supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1, in each year thereafter shall estimate project area expenses for the fiscal year ensuing. Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights of way, easements, or other interest in property deemed necessary for the construction, operation and maintenance of any projects therein. The expense of the project area may, in the discretion of the board, or boards, of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments. Upon adoption of a budget covering necessary expenses, the board, or boards, of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners and/or city auditor of each county and/or city in the project area. When the board, or boards, of supervisors has determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually, at the time of levying county taxes, levy a special assessment of the taxable real property in the project area, not to exceed three (3) mills. It shall be known as the "..... (name of district) soil and water conservation district special assessment," and shall be sufficient to raise the income reported to them in the estimate of the supervisors. Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed. Funds produced each year by this special tax levy shall be available until spent, and if this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed forty (40) years.

History: En. Sec. 21, Ch. 291, L. 1969.

76-230. Federal authority unaffected. The provisions of this section shall not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions, it being the express purpose and intent of this section to aid but not to interfere with the government of the United States or of any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control. The provisions of this section shall not be construed to impair, limit, or repeal any right whatsoever, which the government of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights, it being the purpose of this section expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969.

76-231. Special assessments a lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied, and after the date levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 23, Ch. 291, L. 1969.

76-232. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969.

76-233. Duty to maintain improvements. Whenever any project petitioned for, or created by the state or federal government, has been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board, or boards, of supervisors, under whose jurisdiction the project area was created, to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise, in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969.

CHAPTER 3—RANGELAND RESOURCES ACT

Section

- 76-301. Short title.
- 76-302. Purpose.
- 76-303. Definitions.
- 76-304. State coordinator.
- 76-305. Committee composition.
- 76-306. Committee—appointment—tenure.
- 76-307. Duties of committee.

76-301. Short title. This act shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977.

Title of Act

An act, which shall be known as the "Montana Rangeland Resources Act", to be administered by the department of nat-

ural resources and conservation; establishing the Montana rangeland resources committee to promote the coordination of activities intended to maintain and enhance the rangeland resources of the state of Montana.

76-302. Purpose. The purpose of this act is to establish a program of rangeland management whereby:

- (1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control,

erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408,
L. 1977.

76-303. Definitions. As used in this act, the following definitions apply:

(1) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use. The term includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

(2) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(3) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Department" means the department of natural resources and conservation.

(6) "Committee" means the Montana rangeland resources committee selected as provided in 76-306.

(7) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: En. 76-303 by Sec. 3, Ch. 408,
L. 1977.

76-304. State coordinator. (1) The department shall maintain and staff the office of state coordinator for the rangeland resources act.

(2) The state coordinator shall:

(a) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(b) strive to create understanding and compatibility between the

many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(c) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(d) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(e) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408,
L. 1977.

76-305. Committee composition. The governor may select a committee in accordance with 76-306 which is composed as follows:

- (1) a chairman who is a rancher;
- (2) a vice-chairman who is a rancher;
- (3) a rancher from the eastern area of the state;
- (4) a rancher from the northern area of the state;
- (5) a rancher from the area of the state west of the continental divide;
- (6) a rancher from the southern area of the state;
- (7) a representative from each of the following agencies:
 - (a) Soil conservation service;
 - (b) United States forest service;
 - (c) Montana state university;
 - (d) Farmers home administration;
 - (e) Montana stockgrowers association;
 - (f) Office of economic development division;
 - (g) School of forestry of the university of Montana;
 - (h) Department of fish and game;
 - (i) Bureau of land management;
 - (j) Montana woolgrowers association;
 - (k) Department of natural resources and conservation;
 - (l) Bureau of Indian affairs;
 - (m) Montana cattlemen's association;
 - (n) Department of state lands;
 - (o) Society for range management;
 - (p) United States fish and wildlife service;
 - (q) United States agricultural and stabilization service.

History: En. 76-305 by Sec. 5, Ch. 408,
L. 1977.

76-306. Committee—appointment—tenure. (1) The governor shall select the members described in 76-305, subsections (1) through (6) from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(2) The governor shall select the members described in 76-305, sub-

section (7) from a list submitted by their respective agencies and/or organizations.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

History: En. 76-306 by Sec. 6, Ch. 408,
L. 1977.

76-307. Duties of committee. The committee shall:

(1) review and recommend annual and long-range work programs;

(2) suggest priorities of work;

(3) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

History: En. 76-307 by Sec. 7, Ch. 408,
L. 1977.

TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

Chapter

1. Militia, composition, enrollment—officers, general provisions, Repealed—Section 73, Chapter 94, Laws of 1974.
2. Military courts, Repealed—Section 73, Chapter 94, Laws of 1974.
3. Articles governing militia, Repealed—Section 73, Chapter 94, Laws of 1974.
4. General provisions, Repealed—Section 73, Chapter 94, Laws of 1974.
5. Soldiers and sailors preference in public employment, 77-501.
6. Re-employment of persons completing military or naval service, 77-604.
7. Restoration of state and other employees to positions occupied before induction into military service, 77-707.
11. Removal of disability of minority of veterans and spouses for benefits under Servicemen's Readjustment Act, Repealed—Section 73, Chapter 94, Laws of 1974.
12. Montana home guard, Repealed—Section 73, Chapter 94, Laws of 1974.
16. Militia—general provisions, 77-1601 to 77-1606.
17. Officers of militia, 77-1701 to 77-1708.
18. Enlisted members of militia, 77-1801 to 77-1804.
19. Military courts for militia, 77-1901 to 77-1908.
20. Property—pay and allowances—pensions—armories, 77-2001 to 77-2007.
21. Privileges of members of militia—unlawful acts, 77-2101 to 77-2108.
22. Home guard, 77-2201 to 77-2204.
23. Civil defense, 77-2301 to 77-2301.2, 77-2302 to 77-2304, 77-2305.1, 77-2306, 77-2307.1 to 77-2307.4, 77-2308 to 77-2315.
24. Post-attack resource management, 77-2401 to 77-2406.
25. Vietnam veterans—honorarium or adjusted compensation, 77-2501 to 77-2511.

CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-101 to 77-163. (1330 to 1383) Repealed.

Repeal

Sections 77-101 to 77-163 (Secs. 1 to 5, 7 to 55, Ch. 191, L. 1919; Sec. 1, Ch. 99, L. 1927; Sec. 1, Ch. 160, L. 1937; Secs. 1 to 7, Ch. 89, L. 1943; Secs. 1, 2, Ch. 118, L. 1947; Sec. 1, Ch. 132, L. 1947; Sec. 1, Ch. 20, L. 1949; Sec. 1, Ch. 21, L. 1949; Sec. 1, Ch. 23, L. 1949; Sec. 1, Ch. 25, L. 1955; Sec. 1, Ch. 26, L. 1955; Secs. 1, 2, Ch.

272, L. 1959; Sec. 27, Ch. 97, L. 1961; Sec. 1, Ch. 74, L. 1963; Sec. 35, Ch. 177, L. 1965; Secs. 5, 6, Ch. 237, L. 1967; Sec. 32, Ch. 93, L. 1969; Sec. 1, Ch. 113, L. 1971; Sec. 16, Ch. 423, L. 1971; Sec. 1, Ch. 32, L. 1973), relating to the state militia and national guard, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 2—MILITARY COURTS

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-201 to 77-214. (1384 to 1397) Repealed.

Repeal

Sections 77-201 to 77-214 (Secs. 56 to 69, Ch. 191, L. 1919), relating to military

courts, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 3—ARTICLES GOVERNING MILITIA

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-301. (1398) Repealed.

Repeal

Section 77-301 (Sec. 70, Ch. 191, L. 1919), relating to articles governing the

militia, was repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 4—GENERAL PROVISIONS

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-401 to 77-420. (1399 to 1412) Repealed.**Repeal**

Sections 77-401 to 77-420 (Secs. 6, 71 to 83, Ch. 191, L. 1919; Sec. 1, Ch. 51, L. 1925; Sec. 1, Ch. 149, L. 1951; Sec. 1,

Ch. 70, L. 1955; Secs. 1 to 6, Ch. 168, L. 1955; Secs. 25, 26, Ch. 271, L. 1963), relating to the militia, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 5—SOLDIERS AND SAILORS PREFERENCE IN PUBLIC EMPLOYMENT

Section

77-501. Purpose—definitions—preference.

77-501. (5653) Purpose—definitions—preference. (1) The purpose of this section is to provide for preference of veterans, their unremarried surviving spouses and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

(2) For purposes of this section, the following definitions apply:

(a) The term “veterans” means persons who served in the armed forces of the United States in time of war or declared national emergency and who have been separated from service upon conditions other than dishonorable or who have served on active military duty for more than 180 days after January 31, 1955, or who were discharged or released because of a service-connected disability, including but not limited to those veterans serving because of the Vietnam conflict.

(b) The term “war or declared national emergency” includes:

- (i) the Civil War;
- (ii) the Spanish American War;
- (iii) the Philippine insurrection;
- (iv) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;
- (v) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive; and
- (vi) the Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive.

(c) The term “surviving spouse” means an unremarried surviving spouse of a veteran.

(d) The word “percent” means percent of the total aggregate points of the examination referred to.

(3) (a) In every public department and upon all public works of the state of Montana and of any county or city thereof, the following shall be preferred for appointment and employment: veterans, their spouses and surviving spouses, and the other dependents of disabled veterans and disabled civilians recommended by the rehabilitative services division of the department of social and rehabilitation services.

(b) Age, loss of limb, or other physical impairment which does not in

fact incapacitate does not disqualify any disabled veteran or civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved.

(c) Those of the above-described veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of the wars, military expeditions, or police actions, whenever such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans.

(4) (a) When written or oral examinations are required for employment, disabled veterans and their spouses, their unremarried surviving spouses, and other dependents shall have added to their examination ratings a credit of 10 points. All other veterans, their spouses, unremarried surviving spouses, and dependents shall have added to their examination ratings a credit of five points.

(b) The fact that an applicant has claimed a veterans' credit may not be made known to the examiners until ratings of all applicants have been recorded, after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit.

(c) The benefits of this subsection are in addition to and not in derogation of the preference in appointment and employment or both given by subsection (2).

(5) (a) None of the benefits of this section accrue to any person who refused to serve on active duty in the military service to which attached or to take up arms in the defense of the United States.

(b) No person who has not been a resident of Montana for at least 1 year immediately preceding an appointment is entitled to such preference.

(c) For city or county employment, no preference will be granted unless an applicant under this section is also a resident of the city or town or county in which employment is sought.

(6) Any person entitled to preference in this section who has applied for any appointment or employment upon public works of the state of Montana or any county and city thereof or in any public department of the state and who has been denied employment or appointment and feels that the spirit of this section has been violated and that such person is in fact qualified physically and mentally and possesses business capacity, competency, and education to discharge the duties of the position applied for may petition by verified petition the district court of the state of Montana in the county in which the work is to be performed. The petition shall set forth the facts of the application, qualifications, competency, and such person's honorable discharge or other qualifications warranting the applicant to preference under this section. Upon filing of such petition, any judge in the court shall issue an order to show cause to the appointing authority directing the appointing authority to appear in the court at a specified time and place, not less than 5 or more than 10 days after the filing of the verified petition, to show cause, if any exists, why the veteran or person entitled to preference should not be employed by the appointing authority. The district court has jurisdiction upon the proper showings to

issue its order directing and ordering the appointing authority to comply with this law in giving the preference provided for.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1927; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969; amd. Sec. 38, Ch. 535, L. 1975; amd. Sec. 4, Ch. 49, L. 1977.

Amendments

The 1969 amendment, in subdivision (1), item (a), substituted "December 31, 1946" for "September 2, 1945" as terminal date for service in World War II and added "and those honorably discharged veterans * * * because of the Vietnam Conflict"; deleted former item (c), which read, "The word 'per centum' means per centum of the total aggregate points of the examination hereinafter referred to"; and in subdivision (3), substituted "ten points" and "five points" for "ten per centum (10%)" and "five per centum (5%)" after "credit of."

The 1975 amendment substituted references to surviving spouses, spouses, and various neuter terms for references to widows, wives, and masculine pronouns, throughout the section.

The 1977 amendment inserted the sub-

section (1) designation; redesignated former subdivisions (1) through (5) as subdivisions (2) through (6); substituted "persons" for "men and women" near the beginning of subdivision (2)(a); divided former subdivision (1)(a) into subdivisions (2)(a) and (2)(b); redesignated former subdivisions (2)(b) and (2)(c) as subdivisions (2)(c) and (2)(d); substituted "rehabilitative services division of the department of social and rehabilitation services" for "state rehabilitation bureau" at the end of subdivision (3)(a); deleted a proviso from the end of subdivision (5) (a) which provided that no person, not a citizen of the United States could be employed by any state, city or county officer if competent American labor was available; and made minor changes in phraseology, punctuation and style.

Separability Clause

Section 2 of Ch. 193, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 6—RE-EMPLOYMENT OF PERSONS COMPLETING MILITARY OR NAVAL SERVICE

Section

77-604. Enforcement procedure.

77-604. Enforcement procedure. In case any private employer refuses to reemploy any person entitled to reemployment under the provisions of 77-601 through 77-604, the district court of the judicial district in which such private employer maintains his place of business has power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to such benefits, to specifically require such employer to comply with 77-601 through 77-604, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by such employer's unlawful action. Upon application to the county attorney of the county in which such private employer maintains a place of business by any person claiming to be entitled to redress under 77-601 through 77-604, the county attorney shall appear and act as attorney for such person in the amicable settlement of the claim or in the filing of any motion, petition, or other appropriate pleading to specifically require such employer to comply with such provisions. No fees or court costs may be taxed against the person applying for such benefits.

History: En. Sec. 4, Ch. 150, L. 1941; amd. Sec. 5, Ch. 49, L. 1977.

Amendments

The 1977 amendment substituted "77-

601 through 77-604" for "this act" throughout the section; inserted "the county attorney" before "shall" in the second

sentence; and made minor changes in phraseology, punctuation and style.

CHAPTER 7—RESTORATION OF STATE AND OTHER EMPLOYEES TO POSITIONS OCCUPIED BEFORE INDUCTION INTO MILITARY SERVICE

Section

77-707. Acting officer—how appointed.

77-707. Acting officer—how appointed. The governor, in the case of district judges and officers elected from the state at large, and the board of county commissioners, in the case of members of either house of the legislature and county, township, or district officers elected from such county, shall appoint an "acting" officer to temporarily replace any elected officer, designated in 77-701(b), who enters military service in the manner set forth in 77-701. "Acting" officers so appointed shall be appointed for a period not to exceed the unexpired term of the officer whose duties he assumes, and such appointment shall be subject to the right of the elected officer to the restoration of his position.

History: En. Sec. 7, Ch. 47, L. 1941;
amd. Sec. 6, Ch. 49, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

CHAPTER 8—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section

77-801. [Transferred.]

77-801. [Transferred.]

Compiler's Notes

Section 3, Ch. 94, Laws of 1974 renumbered this section as sec. 16-2927.

CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section

77-901. [Transferred.]

77-909 to 77-911. [Transferred.]

77-901. [Transferred.]

Compiler's Notes

Section 4, Ch. 94, Laws of 1974 renumbered this section as sec. 75-8611.

77-909 to 77-911. [Transferred.]

Compiler's Notes

Sections 5 to 7, Ch. 94, Laws of 1974

renumbered these sections as secs. 75-8612 to 75-8614.

CHAPTER 10—VETERANS' WELFARE COMMISSION

Section

77-1002. [Transferred.]

77-1005 to 77-1007. [Transferred.]

77-1009, 77-1010. [Transferred.]

77-1001. Repealed.**Repeal**

Section 77-1001 (Sec. 1, Ch. 111, L. 1945), relating to creation of the vet-

erans' welfare commission, was repealed by Sec. 52, Ch. 121, Laws of 1974.

77-1002. [Transferred.]**Compiler's Notes**

Section 37, Ch. 121, Laws of 1974 renumbered this section as sec. 71-2202.

77-1005 to 77-1007. [Transferred.]**Compiler's Notes**

Sections 30, 39, 40, Ch. 121, Laws of

1974 renumbered these sections as secs. 71-2203 to 71-2205.

77-1008. Repealed.**Repeal**

Section 77-1008 (Sec. 8, Ch. 111, L. 1945), relating to records and property of

the veterans' welfare commission, was repealed by Sec. 52, Ch. 121, Laws of 1974.

77-1009, 77-1010. [Transferred.]**Compiler's Notes**

Sections 41, 42, Ch. 121, Laws of 1974

renumbered these sections as secs. 71-2206 and 71-2207.

77-1011. Repealed.**Repeal**

Section 77-1011 (Sec. 3, Ch. 256, L. 1947), relating to on-the-job training of

veterans, was repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 11—REMOVAL OF DISABILITY OF MINORITY OF VETERANS AND SPOUSES FOR BENEFITS UNDER SERVICEMEN'S READJUSTMENT ACT

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-1101. Repealed.**Repeal**

Section 77-1101 (Sec. 1, Ch. 13, L. 1947), relating to removal of disability of mi-

nority for veterans, was repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 12—MONTANA HOME GUARD

(Repealed—Section 73, Chapter 94, Laws of 1974)

77-1201 to 77-1215. Repealed.**Repeal**

Sections 77-1201 to 77-1215 (Secs. 1 to 15, Ch. 214, L. 1951), relating to the Mon-

tana home guard, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 13—CIVIL DEFENSE

Section

77-1302 to 77-1304. [Transferred.]

77-1306 to 77-1313. [Transferred.]

77-1301. Repealed.**Repeal**

Section 77-1301 (Sec. 1, Ch. 218, L. 1951), relating to the short title of the

act, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1302 to 77-1304. [Transferred.]**Compiler's Notes**

Sections 8 to 10, Ch. 94, Laws of 1974

renumbered these sections as secs. 77-2301 to 77-2303.

77-1305. Repealed.**Repeal**

Section 77-1305 (Sec. 5, Ch. 218, L. 1951), relating to the civil defense ad-

visory council, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1306 to 77-1313. [Transferred.]**Compiler's Notes**

Sections 11 to 18, Ch. 94, Laws of 1974

renumbered these sections as secs. 77-2304 to 77-2311.

CHAPTER 15—POST-ATTACK RESOURCE MANAGEMENT**Section**

77-1502, 77-1503. [Transferred.]

77-1505 to 77-1508. [Transferred.]

77-1501. Repealed.**Repeal**

Section 77-1501 (Sec. 1, Ch. 297, L. 1967), relating to the short title of the

act, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1502, 77-1503. [Transferred.]**Compiler's Notes**

Sections 19 and 20, Ch. 94, Laws of

1974 renumbered these sections as secs. 77-2401 and 77-2402.

77-1504. Repealed.**Repeal**

Section 77-1504 (Sec. 4, Ch. 297, L. 1967), relating to the state emergency re-

source planning committee, was repealed by Sec. 73, Ch. 94, Laws of 1974.

77-1505 to 77-1508. [Transferred.]**Compiler's Notes**

Sections 21 to 24, Ch. 94, Laws of 1974

renumbered these sections as secs. 77-2403 to 77-2406.

CHAPTER 16—MILITIA—GENERAL PROVISIONS**Section**

77-1601. Definitions.

77-1602. Classes of militia.

77-1603. Federal regulations to govern.

77-1604. Rules by governor.

77-1605. Proclamation of martial rule.

77-1606. Powers and duties of department of military affairs.

77-1601. Definitions. Unless the context requires otherwise, in this title:

(1) "Militia" means all the military forces of this state, whether organized or active or inactive.

(2) "National guard" means the army national guard and the air national guard.

(3) "Officer" means commissioned or warrant officer.

(4) "Department" means department of military affairs.

History: En. 77-1601 by Sec. 25, Ch. 94,
L. 1974; amd. Sec. 7, Ch. 49, L. 1977.

Amendments

The 1977 amendment added subdivision (4); and made a minor change in phraseology.

77-1602. Classes of militia. The classes of the militia are:

(1) The organized militia, which consists of the national guard and the Montana home guard;

(2) The unorganized militia, which consists of the members of the militia who are not members of the organized militia.

History: En. 77-1602 by Sec. 26, Ch. 94,
L. 1974.

77-1603. Federal regulations to govern. Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, including the Uniform Code of Military Justice, shall, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state.

History: En. 77-1603 by Sec. 27, Ch. 94,
L. 1974.

77-1604. Rules by governor. The governor may prescribe rules to carry out his functions and duties under this title, and the constitution of this state. These rules must conform to any applicable federal laws and regulations.

History: En. 77-1604 by Sec. 28, Ch. 94,
L. 1974.

77-1605. Proclamation of martial rule. When the militia is employed in aid of civil authority, the governor may by proclamation, declare any part of a county or municipality in which troops are serving to be subject to martial rule.

History: En. 77-1605 by Sec. 29, Ch. 94,
L. 1974.

77-1606. Powers and duties of department of military affairs. Under the direction of the governor, the department shall:

(1) keep a roster of all officers and enlisted persons of the militia of this state whether active, inactive, or retired;

(2) supervise, administer, and coordinate civil defense and disaster control activities;

(3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) maintain the archives and keep the records and documents required by law or regulation to be filed with the United States department of defense;

(5) establish and maintain the headquarters required for the militia;

(6) exercise the powers vested in it and perform any other duty and function required of it by the governor and by federal and state laws and regulations.

History: En. 77-1606 by Sec. 30, Ch. 94, L. 1974; amd. Sec. 8, Ch. 49, L. 1977.

Amendments

The 1977 amendment deleted "of military affairs provided for in Title 82A, chapter 14" after "department" in the preliminary phrase, deleted former subdivi-

vision (5) reading "Supervise, administer, and co-ordinate the activities of the selective service system for which the governor is responsible"; redesignated former subdivisions (6) and (7) as subdivisions (5) and (6); and made minor changes in phraseology, punctuation and style.

CHAPTER 17—OFFICERS OF MILITIA

Section

77-1701. Officers.

77-1702. Oath of office.

77-1703. Retirement of officers.

77-1704. Resignation of officers.

77-1705. Vacating commissions or warrants.

77-1706. Examination as to fitness.

77-1707. Uniform allowance for officers.

77-1708. Officer need not vacate civil office.

77-1701. Officers. (1) The governor shall appoint all officers of the militia.

(2) Officers must be citizens of the United States.

(3) Before a person can be appointed an officer by the governor, he shall be examined and adjudged qualified to be an officer by an examining board. The composition, appointment, and examination procedure of the board, and the nature and scope of examinations, shall be prescribed by federal law or regulation, or state regulations.

(4) Each officer shall hold office under his appointment until he is regularly appointed to another grade or office, or until he is regularly retired, discharged, dismissed, or placed in the reserve.

History: En. 77-1701 by Sec. 31, Ch. 94, L. 1974.

77-1702. Oath of office. (1) Except when a comparable oath is subscribed to under federal law or regulation, every officer shall take and subscribe to the following oath of office: "I, _____, do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the president of the United States and the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and

faithfully discharge the duties of the office of in the
 upon which I am about to enter, so help me God.”

(2) If an officer refuses or neglects to take the oath, he shall be considered to have resigned the office, and a new appointment shall be made.

History: En. 77-1702 by Sec. 32, Ch. 94,
 L. 1974.

77-1703. Retirement of officers. (1) An officer of the national guard shall be retired by order of the governor, for the following reasons:

(a) Upon reaching his sixtieth (60) birthday; or

(b) His unfitness for military service because of a physical disability.

(2) An officer is retired with the grade and rank held by him at the time of retirement.

History: En. 77-1703 by Sec. 33, Ch. 94,
 L. 1974.

77-1704. Resignation of officers. An officer may resign, but the resignation is not effective until it has been accepted by the governor.

History: En. 77-1704 by Sec. 34, Ch. 94,
 L. 1974.

77-1705. Vacating commissions or warrants. The commission or warrant of an officer shall be vacated:

(1) upon acceptance by the governor of the resignation of the officer;
 or

(2) by an order of the governor discharging the officer:

(a) for failure to maintain his qualifications for federal recognition;

(b) upon the scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;

(c) upon a change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;

(d) for his absence from duty without leave for more than 3 months;
 or

(e) upon the recommendation of a board of examination or the sentence of a court-martial.

History: En. 77-1705 by Sec. 35, Ch. 94,
 L. 1974; amd. Sec. 9, Ch. 49, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology and style.

77-1706. Examination as to fitness. (1) The governor, when he considers it necessary, may order an officer to appear before a board of examination. The board of examination shall consist of three (3) officers, senior in rank to the officer whose fitness for service is under examination. The board may:

(a) Inquire into the fitness for military service due to physical disability of an officer under section 77-1703 (1)(b).

(b) Inquire into the moral character, capacity, and professional fitness of an officer in order to make a recommendation under section 77-1705 (2)(e).

(2) The board, under section 77-1703 (1)(b), may recommend the retention of the officer being examined, or his retirement because of a physical inability to perform active service.

(3) The board, under section 77-1705 (2)(e), may recommend the discharge and the vacating of his commission or warrant.

(4) The findings of the board become effective only upon the approval of the governor.

History: En. 77-1706 by Sec. 36, Ch. 94,
L. 1974.

77-1707. Uniform allowance for officers. (1) Every officer of the organized militia shall, within sixty (60) days from the date of the order whereby he is appointed, provide himself, at his own expense, with the uniforms and equipment prescribed by the department for his rank and assignment.

(2) There shall be paid annually on April 1, a uniform allowance to each properly uniformed and equipped officer of the organized militia.

History: En. 77-1707 by Sec. 37, Ch. 94,
L. 1974.

77-1708. Officer need not vacate civil office. A person may be an officer in the militia or in a reserve component of the armed forces of the United States without vacating a civil office or position in this state.

History: En. 77-1708 by Sec. 38, Ch. 94,
L. 1974.

CHAPTER 18—ENLISTED MEMBERS OF MILITIA

Section

77-1801. Terms of enlistment.

77-1802. Oath of enlistment.

77-1803. Extension of terms of service.

77-1804. Retirement of enlisted members.

77-1801. Terms of enlistment. Except as otherwise provided by federal law or regulation, enlistments, re-enlistments, and extension of enlistments shall be for periods as prescribed by the department.

History: En. 77-1801 by Sec. 39, Ch. 94,
L. 1974.

77-1802. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or re-enlists shall take and subscribe to the following oath of enlistment: "I hereby acknowledge to have voluntarily enlisted this _____ day of _____ in the _____ of the United States and the state of Montana for a period of _____ years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United

States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any commissioned officer of the organized militia, or any commissioned officer of the armed forces of the United States detailed to duty with any component of the organized militia of this state, may administer the oath of enlistment to enlisted men.

**History: En. 77-1802 by Sec. 40, Ch. 94,
L. 1974.**

77-1803. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the organized militia until six (6) months after the termination of that emergency.

**History: En. 77-1803 by Sec. 41, Ch. 94,
L. 1974.**

77-1804. Retirement of enlisted members. An enlisted member of the national guard shall be retired by order of the governor, for the following reasons:

- (1) Upon reaching his sixtieth (60) birthday, or
- (2) His unfitness for military service because of a physical disability.

**History: En. 77-1804 by Sec. 42, Ch. 94,
L. 1974.**

CHAPTER 19—MILITARY COURTS FOR MILITIA

Section

- 77-1901. Courts—composition, jurisdiction, powers, and procedures.
- 77-1902. Persons subject.
- 77-1903. Territorial applicability.
- 77-1904. Persons authorized to execute process.
- 77-1905. Confinement of persons committed by military court.
- 77-1906. Reporter and witness fees.
- 77-1907. Fees of civil officers, records.
- 77-1908. Trial by civil authority; when authorized.

77-1901. Courts—composition, jurisdiction, powers, and procedures. The military courts for the militia shall be constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those courts. The convening authority for these military courts, and maximum punishments authorized shall be as prescribed by federal and state law and regulation applicable to the national guard.

**History: En. 77-1901 by Sec. 43, Ch. 94,
L. 1974.**

77-1902. Persons subject. All members of the organized militia, and all other persons lawfully called, ordered, or drafted for duty in the or-

ganized militia from the dates they are required by the terms of the call, order, or other directive to serve, are subject to this chapter.

History: En. 77-1902 by Sec. 44, Ch. 94,
L. 1974.

77-1903. Territorial applicability. (1) This chapter is applicable in all places in this state. It also applies to all persons while serving outside this state and while going to and returning from service outside this state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving outside this state. These courts serve with the same jurisdiction and powers as if held in this state. Offenses committed outside this state may be tried and punished either in or out of this state.

History: En. 77-1903 by Sec. 45, Ch. 94,
L. 1974.

77-1904. Persons authorized to execute process. All processes, writs, warrants, and sentences of military courts shall be directed to and executed by any sheriff, or any officer or member of the police department of any county or municipality. These documents shall be in the same form as processes, writs, or warrants issued by civil courts. All officers to whom a process, writ, or warrant is directed shall execute them and make return thereof to the officer issuing them.

History: En. 77-1904 by Sec. 46, Ch. 94,
L. 1974.

77-1905. Confinement of persons committed by military court. The keepers of a municipal or county jail shall receive a person committed to them by a military court, and shall confine them in accordance with the direction of the court.

History: En. 77-1905 by Sec. 47, Ch. 94,
L. 1974.

77-1906. Reporter and witness fees. A witness subpoenaed to appear before a military court shall receive the same fee as provided by law for witnesses appearing in a civil court. The reporter of a court shall be paid for stenographic services the same as are provided by law for similar services in civil courts.

History: En. 77-1906 by Sec. 48, Ch. 94,
L. 1974.

77-1907. Fees of civil officers, records. Fees for services of civil officers shall be the same as provided by law for services in civil courts. Records of all fees, costs, and disbursements shall be kept in the headquarters of the organization concerned.

History: En. 77-1907 by Sec. 49, Ch. 94,
L. 1974.

77-1908. Trial by civil authority; when authorized. In a case where the offense charged is also an offense against civil authority, the convening

authority of a court martial may, upon request of the civil authorities, order the person charged to be turned over to the appropriate civil authorities of this state for trial.

History: En. 77-1908 by Sec. 50, Ch. 94,
L. 1974.

CHAPTER 20—PROPERTY—PAY AND ALLOWANCES—PENSIONS—ARMORIES

Section

- 77-2001. Property remains public property.
- 77-2002. Organized militia called into service—general fund.
- 77-2003. Pay and allowances.
- 77-2004. Allowances for incidental expenses.
- 77-2005. Pensions—benefits.
- 77-2006. Armories.
- 77-2007. Lease of real property for armories, etc.

77-2001. Property remains public property. All property issued to organizations and members of the organized militia remains public property.

History: En. 77-2001 by Sec. 51, Ch. 94,
L. 1974.

77-2002. Organized militia called into service—general fund. When the organized militia is ordered into active duty as provided for in article VI, section 13 of the constitution of this state, warrants for pay and expenses shall be drawn upon the general fund of the state.

History: En. 77-2002 by Sec. 52, Ch. 94,
L. 1974.

77-2003. Pay and allowances. (1) An officer ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay and allowances as prescribed for an officer of corresponding grade and length of service when on active duty in federal service.

(2) An enlisted member ordered into active duty as provided for in article VI, section 13 of the constitution of this state, shall receive pay at rates equivalent to twice those allowed for an enlisted member of corresponding grade and length of time when on active duty in federal service. This schedule of pay for enlisted members applies only to the first fifteen (15) days of service. After fifteen (15) days, an enlisted member shall receive the pay and allowances as prescribed for an enlisted member of corresponding grade when on active duty in federal service.

(3) The pay and allowances provided for in this section may not be paid when pay and allowances for the active duty are provided out of federal funds.

History: En. 77-2003 by Sec. 53, Ch. 94,
L. 1974.

77-2004. Allowances for incidental expenses. Each commanding officer may receive an allowance for the incidental expenses of his command.

History: En. 77-2004 by Sec. 54, Ch. 94,
L. 1974.

77-2005. Pensions—benefits. (1) A member of the organized militia who is wounded, disabled, or dies while on duty in the service of this state shall receive the same benefits that would have been received if the member had been in federal service. However, no benefits may be granted or paid to a member if the member receives a similar benefit from the federal government for the injuries or death sustained while on duty.

History: En. 77-2005 by Sec. 55, Ch. 94,
L. 1974.

77-2006. Armories. (1) A county, city, or town may convey or lease real property to the state for armories or other military facilities.

(2) A county, city, or town in which a unit of the national guard is organized and regularly stationed may provide any part of the funds to build an armory. The armory must be of sufficient size, and suitable for the drill of the unit.

History: En. 77-2006 by Sec. 56, Ch. 94,
L. 1974.

77-2007. Lease of real property for armories, etc. The department of military affairs may lease real property for armories or other military facilities.

History: En. 77-2007 by Sec. 57, Ch. 94,
L. 1974.

CHAPTER 21—PRIVILEGES OF MEMBERS OF MILITIA—UNLAWFUL ACTS

Section

77-2101. Actions against members of the organized militia.

77-2102. Right-of-way while performing military duty.

77-2103. Depriving members of the organized militia of employment.

77-2104. Leave of absence of state employees attending training camp or similar training program.

77-2105. Authority of commanding officer.

77-2106. Trespassers and disturbers may be arrested.

77-2107. Unlawful sale or detention of military property.

77-2108. Unlawful wearing of uniform.

77-2101. Actions against members of the organized militia. When an action is commenced in a court against a member of the organized militia for an act done in his official capacity in the discharge of his duty, or for an alleged omission to do an act which it was his duty to perform, the defendant shall be defended by the attorney general at the expense of this state, but private counsel may be employed by the defendant.

History: En. 77-2101 by Sec. 58, Ch. 94,
L. 1974.

77-2102. Right-of-way while performing military duty. (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the right-of-way to troops. Motor vehicles traveling in military convoy shall be accorded the right-of-way on all streets and highways.

(2) The exercise of the right-of-way provided for in this section may not interfere with the carriage of the United States mail or with the progress of an ambulance or members of a police or fire department.

(3) A person who fails to yield the right-of-way as prescribed by this section is guilty of a misdemeanor.

History: En. 77-2102 by Sec. 59, Ch. 94, L. 1974; amd. Sec. 10, Ch. 49, L. 1977.

to yield the right-of-way as prescribed by" for "violates" in subsection (3); and made minor changes in punctuation and style.

Amendments

The 1977 amendment substituted "fails

77-2103. Depriving members of the organized militia of employment.

(1) A person may not willfully deprive a member of the organized militia of his employment or prevent his being employed, or obstruct or annoy a member in respect to his trade, business, or employment, because he is a member of the organized militia.

(2) A person may not dissuade any person from enlisting in the organized militia, by threatening to injure, or injuring his business, employment, or trade.

(3) A person who violates this section is guilty of a misdemeanor.

History: En. 77-2103 by Sec. 60, Ch. 94, L. 1974.

77-2104. Leave of absence of state employees attending training camp or similar training program. A state, city, or county employee who is a member of the organized militia of this state or who is a member of the organized or unorganized reserve corps or military forces of the United States, and who has been an employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. This leave may not be charged against the employee's annual vacation time.

History: En. 77-2104 by Sec. 61, Ch. 94, L. 1974.

77-2105. Authority of commanding officer. The commanding officer at any drill, parade, encampment, or other duty may order those under his command to perform any military duty he requires. The commanding officer may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted man who disobeys the orders of his superior officer.

History: En. 77-2105 by Sec. 62, Ch. 94, L. 1974.

77-2106. Trespassers and disturbers may be arrested. (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who interrupts, molests, or disturbs the orderly discharge of duty by those under arms, dis-

turbs or prevents the passage of troops going to or returning from any duty, or assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person committing an offense for which an arrest may be made pursuant to this section is guilty of a misdemeanor.

History: En. 77-2106 by Sec. 63, Ch. 94, L. 1974; amd. Sec. 11, Ch. 49, L. 1977.

Amendments

The 1977 amendment substituted "com-

mitting an offense for which an arrest may be made pursuant to this section" for "violating this section" in subsection (4).

77-2107. Unlawful sale or detention of military property. A person may not conceal, sell, dispose of, offer for sale, purchase, retain after demand made by an officer, or in any manner pledge or pawn any arms, equipment, or other military property issued by the United States or this state for use of the militia. A person violating this section is guilty of a misdemeanor.

History: En. 77-2107 by Sec. 64, Ch. 94, L. 1974.

77-2108. Unlawful wearing of uniform. A person may not wear the uniform or insignia issued or authorized for use by the organized militia, who is not a member of the organized militia. A person violating this section is guilty of a misdemeanor.

History: En. 77-2108 by Sec. 65, Ch. 94, L. 1974.

CHAPTER 22—HOME GUARD

Section

- 77-2201. Organization and composition.
- 77-2202. Governor may prescribe rules.
- 77-2203. Use of armories and equipment.
- 77-2204. Pay—allowances—pensions—benefits.

77-2201. Organization and composition. The home guard may be organized, maintained, and disbanded at the discretion of the governor, in accordance with federal law and regulation, when additional defense forces are needed in this state. The home guard shall be composed of officers assigned to it, and any able-bodied citizen of this state who volunteers to serve in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if enrolled by draft or otherwise as provided by law and regulation.

History: En. 77-2201 by Sec. 66, Ch. 94, L. 1974.

77-2202. Governor may prescribe rules. The home guard shall be organized, armed, equipped, maintained, disciplined, governed, administered,

and trained under rules prescribed by the governor. These rules shall conform to federal law and regulations.

History: En. 77-2202 by Sec. 67, Ch. 94, L. 1974.

77-2203. Use of armories and equipment. The governor may make available to the home guard the facilities of state armories and their equipment and any other state land and property as may be available. The governor may requisition from the federal government for the use of the home guard, arms, ammunition, clothing, equipment, and other items in accordance with federal law and regulations. The governing body of a county, municipality, or school district may make available to the home guard any premises, facilities, equipment, or other property belonging to or under the control of the county, municipality, or school district.

History: En. 77-2203 by Sec. 68, Ch. 94, L. 1974.

77-2204. Pay—allowances—pensions—benefits. (1) An officer or member of the home guard on active duty in the service of this state shall receive the same pay and allowances as prescribed for officers and enlisted members of the militia under section 77-2003.

(2) A member of the home guard who is wounded, disabled, or dies while on active duty in the service of this state, shall receive the same pensions and benefits as prescribed for members of the organized militia under section 77-2005.

History: En. 77-2204 by Sec. 69, Ch. 94, L. 1974.

CHAPTER 23—CIVIL DEFENSE

Section

77-2301. Policy and purpose.

77-2301.1. Short title.

77-2301.2. Limitations.

77-2302. Definitions.

77-2303. Responsibility for disaster and emergency services.

77-2304. Duties of the governor.

77-2305.1. Division of disaster and emergency services.

77-2306. Arrangements for mutual aid.

77-2307.1. Local and interjurisdictional emergency and disaster agencies and services.

77-2307.2. Local emergency or disaster.

77-2307.3. Intergovernmental arrangements.

77-2307.4. Communications.

77-2308. Immunity from liability.

77-2309. Authority to accept services, gifts, grants, and loans.

77-2310. Political activity prohibited.

77-2311. Disaster and emergency services personnel.

77-2312. Temporary housing for disaster victims—site acquisition and preparation.

77-2313. Community disaster loans.

77-2314. Debris and wreckage removal in emergencies or disasters.

77-2315. Identification.

77-2301. Policy and purpose. Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt

and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is hereby found and declared to be necessary:

(1) to authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) to reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters;

(3) to prepare for prompt and efficient search, rescue, recovery, care, and treatment of persons lost, entrapped, victimized, or threatened by emergencies or disasters;

(4) to provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(5) to clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(6) to authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(7) to authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(8) to provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(9) to assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use; and

(10) to supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services.

History: En. Sec. 2, Ch. 218, L. 1951; amd. Sec. 1, Ch. 220, L. 1953; Sec. 77-1302, R. C. M. 1947; amd. and redes. 77-2301 by Sec. 8, Ch. 94, L. 1974; amd. Sec. 2, Ch. 335, L. 1977.

Amendments

The 1974 amendment renumbered this section; deleted "To create a state civil defense agency" from the beginning of subdivision (1); and made minor changes in punctuation.

The 1977 amendment inserted "to provide for prompt and timely reaction to an

emergency or disaster" in the opening paragraph; inserted "or interjurisdictional" in subdivision (1); substituted "disaster and emergency services" in subdivision (1) for "civil defense"; substituted the subdivision (2) for a former subdivision (2) reading "To provide for the rendering of mutual aid among the political subdivisions of the state, and with other states, and with the federal government with respect to carrying out of civil defense functions"; added subdivisions (3) through (10); and made minor changes in punctuation and style.

77-2301.1. Short title. This act may be cited as the "Montana Disaster Act of 1977".

History: En. 77-2301.1 by Sec. 1, Ch. 335, L. 1977.

Title of Act

An act relating to civil defense, disaster, and emergency services; providing powers, duties, and authority for pre-

paredness and assistance in emergencies and disasters; amending sections 77-2301, 77-2302, 77-2303, 77-2304, 77-2306, 77-2309, 77-2310, and 77-2311, R. C. M. 1947; and repealing sections 77-2305 and 77-2307, R. C. M. 1947; and providing an immediate effective date.

77-2301.2. Limitations. Nothing in this chapter may be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this act or other laws may be taken when necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs; but any communications facility or organization (including but not limited to radio and television stations, wire services, and newspapers) may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster;

(3) affect the jurisdiction or responsibilities of police forces, fire-fighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and interjurisdictional disaster and emergency plans shall place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of this act.

History: En. 79-2301.2 by Sec. 3, Ch. 335, L. 1977.

77-2302. Definitions. As used in this chapter, the following definitions apply:

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, or accidents involving radiation byproducts or other hazardous materials.

(4) "Disaster and emergency services" means the prevention of, the preparation for, and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to prevent, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department of military affairs.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize.

(7) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(8) "Principal executive officer" means the mayor, chairman of the county commissioners, or other chief executive officer of a political subdivision.

(9) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress of, preserving life of, or removing survivors from the site of a hazard, emergency, or disaster to a place of safety in case of lost, stranded, entrapped, or injured persons.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings.

History: En. Sec. 3, Ch. 218, L. 1951; amd. Sec. 2, Ch. 220, L. 1953; Sec. 77-1303, R. C. M. 1947; amd. and redes. 77-2302 by Sec. 9, Ch. 94, L. 1974; amd. Sec. 4, Ch. 335, L. 1977.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for

"this act" in the first sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment rewrote this section which defined civil defense and political subdivisions. For prior version, see sec. 77-1303 in the parent volume and the 1974 amendment note.

77-2303. Responsibility for disaster and emergency services. The department of military affairs, through the division of disaster and emergency services, is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

History: En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R. C. M. 1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974; amd. Sec. 5, Ch. 335, L. 1977.

Amendments

The 1967 amendment substituted "by the governor, which salary, however, shall not exceed six thousand six hundred dollars (\$6,600.00) per year" at the end of subsection (a) for "by the legislative assembly in the appropriation to the adjutant general"; and deleted from the end of subsection (a): "If the legislative assembly

does not specify the maximum salary of the director of civil defense, any increase in the salary of the director must be approved by the board of examiners. Before approving any salary increases the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry."

The 1974 amendment renumbered this section; deleted the first three subsections relating to creation of the state civil defense agency and appointment of a director; substituted "department of military affairs" and "department" for references to the director; substituted "this

chapter" for "this act" throughout the section; and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted "through the division of disaster and emergency services"; inserted "planning and"; substituted "disaster and emergency services" for "civil defense"; deleted a former last sentence from the end of the section reading "The department shall co-ordinate the activities of all organizations for civil defense within the state, and maintain liaison with and co-operate with civil defense agencies and organizations of other states, of the federal govern-

ment, and Canada, and have any additional authority, duties, and responsibilities authorized by this chapter as may be prescribed by the governor"; and deleted a former subsection (b) reading "In providing assistance under this chapter, state agencies shall co-operate to the fullest extent possible with each other and with local governments, relief agencies, and the American National Red Cross, but nothing contained in this chapter limits or in any way affects the responsibilities of the American National Red Cross under the act approved January 5, 1905 (33 Stat. 559), as amended."

77-2304. Duties of the governor. (1) The governor is responsible for carrying out this chapter.

(2) In addition to any other powers conferred upon the governor by law, he may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency, if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if he considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, the conditions which have brought about the declaration or which make possible termination of the state of emergency or disaster.

(4) (a) A state of emergency may be declared by the governor when he determines that an emergency, as defined in 77-2302(6), exists.

(b) An executive order or proclamation of a state of emergency shall activate the emergency response and disaster preparation aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(c) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exists, which shall be determined by a declaration of an emergency by the president of the

United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

(5) (a) A state of disaster may be declared by the governor when he determines that a disaster has occurred.

(b) An executive order or proclamation of a state of disaster shall activate the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(c) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(6) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

(7) An executive order or proclamation issued under this section shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.

(8) During a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for emergency or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

(9) The governor shall utilize the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of this chapter.

History: En. Sec. 6, Ch. 218, L. 1951; Sec. 77-1306, R. C. M. 1947; amd. and redes. 77-2304 by Sec. 11, Ch. 94, L. 1974; amd. Sec. 6, Ch. 335, L. 1977.

Amendments

The 1974 amendment renumbered this section; deleted reference to the gover-

nor having control of the civil defense agency; substituted "this chapter" for "this act"; and made minor changes in phraseology.

The 1977 amendment designated the former section as subsections (1) and (9); and inserted subsections (2) through (8).

77-2305. Repealed.**Repeal**

Section 77-2305 (Sec. 7, Ch. 218, L. 49, L. 1977), relating to duties of department of military affairs, was repealed by 1951; Sec. 12, Ch. 94, L. 1974; Sec. 12, Ch. 21, Ch. 335, Laws 1977.

77-2305.1. Division of disaster and emergency services. (1) A division of disaster and emergency services is established in the department of military affairs. The division shall have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program shall be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible. The state disaster and emergency plan and program may provide for:

- (a) prevention and minimization of injury and damage caused by disaster;
- (b) prompt and efficient response to an emergency or disaster;
- (c) emergency relief;
- (d) identification of areas particularly vulnerable to disasters;
- (e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;
- (f) organization of manpower and chains of command;
- (g) coordination of federal, state, and local disaster and emergency activities; and
- (h) other necessary matters.

(3) In preparing and maintaining the state disaster and emergency plan and program, the division shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division shall encourage them to seek advice from these sources.

(4) The division shall:

- (a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;
- (b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;
- (c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;
- (d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program due to limitations of funding, manpower, or other reasons;
- (e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) determine the requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of an emergency or disaster;

(i) plan for the procurement of food, clothing, other necessities, supplies, medicines, materials, and equipment that may be necessary in the event of an emergency or disaster and, as funding is authorized, procure and pre-position the same;

(j) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(k) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of actual emergency or disaster, to insure the availability of adequately trained and equipped personnel in time of emergency or disaster;

(l) direct emergency response and disaster preparation activities as authorized by the governor;

(m) direct disaster response and recovery activities as authorized by the governor;

(n) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with emergencies and disasters;

(o) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(p) have any additional authority, duties, and responsibilities authorized by this act as may be prescribed by the governor.

(5) In providing assistance under this act, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross, but nothing contained in this chapter lists or in any way affects the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended.

History: En. 77-2305.1 by Sec. 7, Ch. 335, L. 1977.

77-2306. Arrangements for mutual aid. (1) Political subdivisions shall be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state for reciprocal aid and assistance in coping with emergencies and disasters.

(2) In reviewing disaster and emergency plans and programs of politi-

cal subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof and shall carry out arrangements of any such agreements relating to the local and political subdivision.

History: En. Sec. 8, Ch. 218, L. 1951; Sec. 77-1308, R. C. M. 1947; amd. and redes. 77-2306 by Sec. 13, Ch. 94, L. 1974; amd. Sec. 13, Ch. 49, L. 1977; amd. Sec. 10, Ch. 335, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 49 and once by Ch. 335. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1974 amendment renumbered this section; and made minor changes in phraseology and style.

Chapter 49, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 335, Laws of 1977, substituted "Political subdivisions shall be encouraged and assisted by the division to conclude mutual aid arrangements" at the

beginning of the section for "The director of each local organization of civil defense may develop or cause to be developed mutual-aid arrangements"; substituted "aid and assistance in coping with emergencies and disasters" at the end of the first sentence for "civil defense aid and assistance in case of disaster too great to be dealt with unassisted"; deleted a second sentence of subsection (1) which read: "These arrangements shall be consistent with the state civil defense plan and program, and in time of emergency each local organization for civil defense shall render assistance in accordance with the provisions of the mutual-aid arrangements"; inserted subsection (2); redesignated former subsection (2) as subsection (3); substituted "Local and interjurisdictional disaster and emergency agencies" at the beginning of subsection (3) for "The director of each local organization for civil defense"; and made minor changes in phraseology, punctuation and style.

77-2307. Repealed.

Repeal

Section 77-2307 (Sec. 9, Ch. 218, L. 1951; Sec. 4, Ch. 220, L. 1953; Sec. 14,

Ch. 94, L. 1974), relating to local organization for civil defense, was repealed by Sec. 21, Ch. 335, Laws 1977.

77-2307.1. Local and interjurisdictional emergency and disaster agencies and services. (1) Each political subdivision within this state shall designate a local or interjurisdictional agency responsible for emergency and disaster prevention and preparedness and coordination of response and recovery.

(2) The local or interjurisdictional disaster and emergency services agency shall receive assistance from the division in emergency and disaster prevention, preparedness, response, and recovery to the extent of the division's authority and responsibility.

(3) Each political subdivision shall adhere to the provisions of this act and the state disaster and emergency plan and program regarding the structure and responsibilities of the local or interjurisdictional disaster and emergency service agencies and their relationship to the division.

(4) The principal executive officer of each political subdivision shall notify the division of the manner by which the political subdivision is providing or securing emergency and disaster planning and services, identify

the person who heads the agency from which planning and services are obtained, and furnish additional information as the division requires.

(5) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster and emergency plan and program covering the area for which that agency is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(6) The local or interjurisdictional agency shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster and emergency chain of command.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977.

77-2307.2. Local emergency or disaster. (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

(a) An emergency proclamation may not continue for longer than 10 days except by consent of the governing body of the political subdivision.

(b) An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists.

(3) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

(a) A disaster declaration may not continue for longer than 30 days except by consent of the governing body of the political subdivision.

(b) A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist.

(4) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such orders or resolutions shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division, the local or interjurisdictional agency, and the agency charged with recording the official records of the political subdivision.

(5) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs.

History: En. 77-2307.2 by Sec. 9, Ch. 335, L. 1977.

77-2307.3. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate civil defense and disaster compact with all states, as defined therein, which states have enacted or shall hereafter enact the compact in the form substantially contained in 77-1403.

(2) The governor may enter into the compact with any state that does not border this state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) Nothing in subsections (1) and (2) may be construed to limit previous or future entry of this state into the interstate civil defense and disaster compact.

(4) All interstate civil defense and disaster compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

History: En. 77-2307.3 by Sec. 11, Ch. 335, L. 1977.

77-2307.4. Communications. (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the division of communications, department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the division of communications and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the state telecommunications system or network.

History: En. 77-2307.4 by Sec. 12, Ch. 335, L. 1977.

77-2308. Immunity from liability. (1) Neither the state nor any political subdivision of the state nor the agents or representatives of the state or any political subdivision thereof are liable for personal injury or

property damage sustained by any person appointed or acting as a volunteer civilian defense worker or member of any agency engaged in civilian defense activity during a disaster or catastrophe. This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the workers' compensation law or any pension law or any act of congress.

(2) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity during a disaster or catastrophe, nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with this chapter or any order or rule promulgated under the provisions of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, are liable for the death of or injury to persons or for damage to property as a result of any such activity.

History: En. Sec. 10, Ch. 218, L. 1951; Sec. 77-1310, R. C. M. 1947; amd. and redes. 77-2308 by Sec. 15, Ch. 94, L. 1974; amd. Sec. 2, Ch. 73, L. 1977.

Compiler's Notes

Section 15, Ch. 49, Laws of 1977, purported to repeal this section. However, the code commissioner has determined that the section, as re-enacted and amended by Chapter 73, Laws of 1977, should appear in the codes.

Amendments

The 1974 amendment renumbered this section; inserted "**nor the owners of facilities used for civil defense shelters, pur-**

suant to a fallout shelter license or privilege agreement and while" after "any agency engaged in civilian defense activity" near the middle of subsection (2); substituted "**this chapter**" for "this act" in subsection (2); and made minor changes in phraseology.

The 1977 amendment inserted "during a disaster or catastrophe" in two places; substituted "workers' compensation law" for "workmen's compensation law" near the end of the second sentence of subsection (1); deleted "or regulation" after "or any order or rule" in the middle of subsection (2); and made minor changes in phraseology and punctuation.

77-2309. Authority to accept services, gifts, grants, and loans. Whenever the federal government or any agency or officer thereof or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer and upon the acceptance the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

History: En. Sec. 11, Ch. 218, L. 1951; Sec. 77-1311, R. C. M. 1947; amd. and redes. 77-2309 by Sec. 16, Ch. 94, L. 1974; amd. Sec. 13, Ch. 335, L. 1977.

Amendments

The 1974 amendment renumbered this section; and made minor changes in style. The 1977 amendment substituted "emer-

gency or disaster services" near the middle of the section for "civil defense"; deleted "and regulations" after "rules" near

the end of the section; and made minor changes in punctuation.

77-2310. Political activity prohibited. An organization for disaster and emergency services established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes.

History: En. Sec. 12, Ch. 218, L. 1951; Sec. 77-1312, R. C. M. 1947; amd. and redes. 77-2310 by Sec. 17, Ch. 94, L. 1974; amd. Sec. 14, Ch. 335, L. 1977.

section; substituted "this chapter" for "this act"; and made minor changes in phraseology.

The 1977 amendment substituted "disaster and emergency services" for "civil defense."

Amendments

The 1974 amendment renumbered this

77-2311. Disaster and emergency services personnel. A person may not be employed in any disaster and emergency services organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for disaster and emergency services shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I _____, swear (or affirm) that I will support and defend The Constitution of the United States and The Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God."

History: En. Sec. 13, Ch. 218, L. 1951; Sec. 77-2313, R. C. M. 1947; amd. and redes. 77-2311 by Sec. 18, Ch. 94, L. 1974; amd. Sec. 15, Ch. 335, L. 1977.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act" in the first paragraph; and made minor changes in phraseology.

The 1977 amendment deleted "or associated in any capacity" after "employed" near the beginning of the section; substituted "disaster and emergency services" for "civil defense" in two places; deleted a former last sentence of the oath

reading "And I do further swear (or affirm) that I do not advocate nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am a member of the Montana civil defense agency I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence"; added "So help me, God" to the oath and made minor changes in phraseology, punctuation and style.

77-2312. Temporary housing for disaster victims—site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make such units available to any political subdivision of the state;

(b) to assist any political subdivision of this state which is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or transportation (within or across the state) laws or regulations within this state when by proclamation he declares such suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

(3) Nothing contained in this chapter shall be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery.

History: En. 77-2312 by Sec. 16, Ch. 335, L. 1977.

77-2313. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon his determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan and to receive and disburse the proceeds of any approved loan to any applicant political subdivision;

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, no application amount may

exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenues of the political subdivision are insufficient to meet its operating expenses, including additional emergency- or disaster-related expenses of a political subdivision operation character.

History: En. 77-2313 by Sec. 17, Ch. 335, L. 1977.

77-2314. Debris and wreckage removal in emergencies or disasters.

(1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove, from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize such funds to make grants to any political subdivision for the purpose of removing debris or wreckage from publicly or privately-owned land or water.

(2) (a) Authority under this section shall not be exercised unless the affected political subdivision, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(b) Whenever the governor provides for clearance of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

History: En. 77-2314 by Sec. 18, Ch. 335, L. 1977.

77-2315. Identification. Disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

History: En. 77-2315 by Sec. 19, Ch. 335, L. 1977.

Separability Clause

Section 20 of Ch. 335, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applica-

tions, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 21 of Ch. 335, Laws 1977 read "Sections 77-2305 and 77-2307, R. C. M. 1947, are repealed."

Effective Date passage and approval. Approved April 8, 1977.
 Section 22 of Ch. 335, Laws 1977 provided the act should be effective on its

CHAPTER 24—POST-ATTACK RESOURCE MANAGEMENT

Section

- 77-2401. Legislative findings—policy of state.
- 77-2402. Definition of terms.
- 77-2403. Governor's powers and duties under act.
- 77-2404. Proclamation of emergency.
- 77-2405. Judicial inquiry as to emergency proclamation and facts.
- 77-2406. Penalty for violation of rules and regulations.

77-2401. Legislative findings—policy of state. (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for, and respond promptly to, the problems created by an attack. Therefore, it is hereby found and declared to be necessary to confer upon the governor and upon the executive heads of governing bodies of political subdivisions of this state the emergency powers provided for in this chapter.

(2) It is further declared to be the purpose of this chapter and the policy of this state that all resource management functions of this state be co-ordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967; Sec. 77-1502, R. O. M. 1947; amd. and redes. 77-2401 by Sec. 19, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; deleted "To create an office of

emergency resource management for the execution of a plan for emergency resource management" after "declared to be necessary" near the end of subsection (1); substituted "this chapter" for "this act" in subsection (2); and made minor changes in phraseology and style.

77-2402. Definition of terms. Unless the context requires otherwise, in this chapter:

(1) "Emergency Resources Management Plan" means that plan prepared by the department of military affairs, approved by the federal office of emergency planning, and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States, and shall become operative

upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(3) "Political subdivision" means any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967; Sec. 77-1503, R. C. M. 1947; amd. and redes. 77-2402 by Sec. 20, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for

"this act" in the introductory sentence; substituted "department of military affairs" for "state emergency resources planning committee" in the first sentence of subdivision (1); and made minor changes in phraseology.

77-2403. Governor's powers and duties under act. (1) The governor has general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this chapter, the governor may cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this chapter, and to effect its policies and purpose, the governor may make, amend, and rescind the necessary orders, rules, and regulations to carry out this chapter within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967; Sec. 77-1505, R. C. M. 1947; amd. and redes. 77-2403 by Sec. 21, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act" throughout the section; and made minor changes in phraseology.

77-2404. Proclamation of emergency. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the postattack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a postattack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

(2) During the period when the proclamation issued under subsection (1) of this section is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for postattack recovery and rehabilitation activities, subject to the limitations

set forth in this chapter and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) take such other action as may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this chapter have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be considered a complete and sufficient substitute. All existing laws, ordinances, rules and orders inconsistent with the provisions of this chapter or any rule or order issued under the authority thereof shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised under a proclamation of emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress, however, the proclamation shall terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967; Sec. 77-1506, R. C. M. 1947; amd. and redes. 77-2404 by Sec. 22, Ch. 94, L. 1974; amd. Sec. 14, Ch. 49, L. 1977.

The 1977 amendment deleted "regulations" after "rules" throughout the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act" throughout the section; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 15 of Ch. 49, Laws 1977 read "Section 77-2308, R. C. M. 1947, is repealed."

77-2405. Judicial inquiry as to emergency proclamation and facts. Every proclamation and the facts related in the proclamation issued under this chapter is subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether the action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967; Sec. 77-1507, R. C. M. 1947; amd. and redes. 77-2405 by Sec. 23, Ch. 94, L. 1974.

Amendments

The 1974 amendment renumbered this section; substituted "this chapter" for "this act"; and made minor changes in phraseology.

77-2406. Penalty for violation of rules and regulations. A person violating any of the rules, regulations or orders adopted and promulgated under section 77-2404 shall, upon conviction, be subject to a fine of not to exceed ten thousand dollars (\$10,000) or to a term of imprisonment of not to exceed five (5) years, or both.

History: En. Sec. 8, Ch. 297, L. 1967; Sec. 77-1508, R. C. M. 1947; amd. and redes. 77-2406 by Sec. 24, Ch. 94, L. 1974.

section; substituted "under section 77-2404" for "under section 6 [77-1506]"; and made minor changes in phraseology and style.

Amendments

The 1974 amendment renumbered this

CHAPTER 25—VIETNAM VETERANS—HONORARIUM OR ADJUSTED COMPENSATION

Section

- 77-2501. Definitions.
- 77-2502. Purpose—honorarium granted.
- 77-2503. Procedure when death occurs before payment.
- 77-2504. Application for payment.
- 77-2505. Application by guardian.
- 77-2506. Deadline for applications.
- 77-2507. Contents of application.
- 77-2508. Rules and regulations—law to be construed liberally.
- 77-2509. Assistance by state and county officials.
- 77-2510. Right to payment not subject to legal process.
- 77-2511. Authority for necessary supplies.

77-2501. Definitions. Terms used in this law have the meanings stated in this section unless the context clearly requires otherwise:

- (1) "Vietnam War" means the period between January 1, 1961, and March 31, 1973.
- (2) "Vietnam area" means the countries of Vietnam, Laos, Cambodia, and Thailand and the waters surrounding them.
- (3) "Military forces" mean the United States army, navy, marine corps, air force, coast guard, and all other groups, branches, and services forming a part of the armed services under the control and subject to the discipline of the department of defense of the United States.
- (4) "Military service" means service on active duty for other than training purposes by any person in any of the military forces at any time during the Vietnam War.
- (5) "Person" means any man or woman.

(6) "Serviceman" means a person entitled to receive payments under section 2 [77-2502] of this law.

(7) "Resident of Montana" means a person who at the time of his entry into the military service had his residence in Montana. A person who on January 1, 1961, was serving on active duty in any of the military forces, and who at the time of his then last entry into such service made his home in Montana, and who was in the military service at some time during the Vietnam War, shall be deemed a resident of Montana unless, after such last entry and before entry into military service in such war, he had established and was then maintaining residence in some other state; and any such serviceman whose parents or surviving parent then resided in Montana shall be deemed a resident of Montana.

(8) "United States" means the area of the fifty (50) states and the District of Columbia, to high-water mark on their water boundaries.

(9) "Board" means the board of examiners.

History: En. 77-2301 by Sec. 1, Ch. 288, L. 1974.

honorarium or adjusted compensation to each resident of Montana in military service in the Vietnam area during the Vietnam War between January 1, 1961, and March 31, 1973.

Title of Act

An act to provide for the payment of an

77-2502. Purpose—honorarium granted. (1) In recognition and appreciation of the valor and devotion of the persons who by their military service discharged the obligation of the state of Montana to contribute from its manpower to the defense of the republic in the prosecution of the Vietnam War, and in partial adjustment for the economic detriment suffered by them by reason of their service, the state of Montana hereby grants to each such person an honorarium, or adjusted compensation, in a sum to be computed as provided in this section.

(2) Each resident of Montana who was in military service at any time during the Vietnam War, and during part or all of the period of such service was in the Vietnam area, is granted the sum of eighteen dollars and seventy-five cents (\$18.75) for each month and major fraction of a month of such service in the Vietnam area. For the purpose of this subdivision:

(a) any serviceman who, while on active duty in the Vietnam area during the Vietnam War, suffered disease or injury from any cause whatsoever, including injury from exposure to weather conditions, and in line of duty, and is hospitalized therefor by any of the military forces, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously hospitalized in any hospital or similar institution under the control of or employed by the United States, wherever situated;

(b) any serviceman who was taken prisoner by the enemy in the Vietnam area, and who was classified by the department of defense as a prisoner of war, shall be deemed to have been in military service in the Vietnam area as long as he shall be or was continuously so classified; but

(c) each such prisoner of war shall be paid not less than seven hundred fifty dollars (\$750), and no serviceman shall be paid, under any of the provisions of this subdivision, more than seven hundred fifty dollars (\$750).

(3) The surviving spouse, children, or parents, as the case may be, of any serviceman who shall have died in line of duty while in military service in the Vietnam area during the Vietnam War, or who shall have died from any cause attributable to his military service, in the Vietnam area in line of duty, as shown by the records of the United States veterans administration, prior to receiving a payment under this section, or who is officially listed as missing in action, shall be paid the amount to which such deceased or missing serviceman would have been entitled had he received such payment, or if that amount is less than seven hundred fifty dollars (\$750), then such surviving spouse, children, or parents, as the case may be, shall be paid the sum of seven hundred fifty dollars (\$750) and no more.

(4) Each resident of Montana who was totally disabled by a service-connected disability as certified by the veterans administration for service in the Vietnam area shall be paid the sum of seven hundred fifty dollars (\$750).

(5) Notwithstanding any other provisions of this law:

(a) a person who has received or is entitled to receive from any other state or territory of the United States a gratuity, bonus, honorarium, adjusted compensation, or similar payment for military service in the military forces in the Vietnam War, shall be paid by the state of Montana only the excess, if any, of the aggregate amount to which he would otherwise be entitled hereunder, over and above the amount he receives or is entitled to receive from such other state or territory; and

(b) no payment shall be made under this law to any person who has been dishonorably discharged from military service and has not been restored by proper authority to an honorable status, or to any person still in service who is in a dishonorable status and has not been restored by proper authority to an honorable status at the time of payment.

History: En. 77-2302 by Sec. 2, Ch. 288,
L. 1974; Amd. Sec. 1, Ch. 342, L. 1975.

Amendments

The 1975 amendment inserted subsection (4); and redesignated former subsection (4) as subsection (5).

77-2503. Procedure when death occurs before payment. (1) In the case of death of any serviceman before payment under this law, the amount granted to him in section 2 [77-2502] shall be paid as follows:

(a) to his surviving spouse, provided such spouse has not remarried before making application for payment; or

(b) if there is no surviving spouse, or the spouse has remarried before making such application, then to the serviceman's child or children who shall be living when the payment is made, in equal shares if more than one, and all thereof if only one; or

(c) if there is no surviving spouse who has not remarried and there are no surviving children, the payment shall be made to the parents of the serviceman, or if one of them is deceased, then the whole to the parent who survives, or if both parents are deceased, then no payment shall be made.

(2) The payments provided in this section shall be made only to per-

sons living at the time of payment, and no payment shall be made to the estate of any person.

History: En. 77-2303 by Sec. 3, Ch. 288, L. 1974.

77-2504. Application for payment. All payments provided for in sections 2 [77-2502] and 3 [77-2503] of this law shall be made upon applications made by claimants in the form prescribed by this law, to be filed with the state board of examiners. The board shall pass upon all applications and upon the proof offered in support thereof, and upon the approval of any application by the board it shall file the same with the state auditor, who shall immediately issue to such applicant a warrant upon the general fund in the amount allowed by the board and make personal delivery of such warrant to the applicant, or mail the same to the applicant at the current address shown in the application.

History: En. 77-2304 by Sec. 4, Ch. 288, L. 1974.

77-2505. Application by guardian. In the case of a minor or incompetent person, a claim shall be filed by and payment made to his guardian or his custodian duly appointed by the veterans administration.

History: En. 77-2305 by Sec. 5, Ch. 288, L. 1974.

77-2506. Deadline for applications. All applications for the payment of grants under this law shall be filed on or before July 1, 1977, with the board of examiners or with a county clerk and recorder of any county of this state. Upon receiving any such application, the clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon the application, over his signature and seal, and immediately transmit the application to the board of examiners. Any filing at a place and within the time specified in this section shall preserve the rights of the applicant to the grant, notwithstanding any defect in his application, provided that any such defects are later corrected under reasonable rules to be adopted by the board of examiners.

History: En. 77-2306 by Sec. 6, Ch. 288, L. 1974; amd. Sec. 1, Ch. 135, L. 1977.

Effective Date

Section 2 of Ch. 135, Laws 1977 provided the act should be effective upon its passage and approval. Approved March 25, 1977.

Amendments

The 1977 amendment extended the application deadline in the first sentence from July 1, 1976 to July 1, 1977.

77-2507. Contents of application. (1) All applications by servicemen shall contain:

- (a) the full name of the applicant;
- (b) the then address of the applicant;
- (c) the date and place of birth of the applicant;
- (d) the name under which the applicant served in the military forces;
- (e) the date of beginning and the date of ending military service;

(f) the date of beginning and the date of ending military service in the Vietnam area;

(g) the date and place where applicant was discharged from active service, or if still on active duty, the name of the organization in which he is then serving;

(h) applicant's residence at the time of entry into military service;

(i) the selective service office in which applicant was registered;

(j) whether applicant has received or is entitled to receive an honorarium or similar payment from any other state or territory of the United States, and if so, the amount thereof; and

(k) such reasonable documentation as the board shall require.

(2) Applications by children or parents of a deceased serviceman shall contain all the information concerning such serviceman as required in an application by such serviceman, so far as obtainable by such applicant, and the necessary facts upon which the applicant claims the right to such payment.

(3) The board of examiners shall cause to be printed an ample supply of application forms, and shall furnish to each clerk and recorder in Montana an adequate supply of such application forms.

(4) Any person who, with intent to defraud, subscribes to any false oath or makes any false representation, either in the application herein provided for or in the proof offered in support thereof, for the purpose of obtaining payment hereunder when he is in fact not entitled to such payment, shall be guilty of the offense of false swearing and punishable accordingly.

History: En. 77-2307 by Sec. 7, Ch. 288,
L. 1974.

77-2508. Rules and regulations—law to be construed liberally. The board of examiners shall adopt all necessary rules and regulations for handling applications for the payments herein provided for, and for the adjudication of questions of fact and of law arising upon such applications, and may accept and consider any form of evidence, including affidavits and other forms of evidence tending to establish claims with reasonable certainty, although not in form admissible in a civil action, it being the intent of this law that it shall be administered liberally to the end that no person entitled to payment hereunder shall be denied it, so far as reasonably possible.

History: En. 77-2308 by Sec. 8, Ch. 288,
L. 1974.

77-2509. Assistance by state and county officials. The attorney general, the state director of the veterans' welfare commission, the employees of said commission, and all other state and all county officers shall render without charge all assistance possible to the board of examiners in the administration of this law, and to applicants for payment in the preparation of applications and making proof thereunder.

History: En. 77-2309 by Sec. 9, Ch. 288,
L. 1974.

77-2510. Right to payment not subject to legal process. The right to receive payment of the honorarium or adjusted compensation herein provided for shall not be assignable, may not be pledged, mortgaged, or otherwise encumbered, and shall not be subject to attachment or to levy under execution or other judicial process.

History: En. 77-2310 by Sec. 10, Ch. 288, L. 1974.

77-2511. Authority for necessary supplies. The state board of examiners is authorized and directed to procure such printing and office supplies and equipment, and to employ such persons, at such compensation, as shall be determined by the board of examiners to be necessary in order to carry out properly the provisions of this law, and all expenses incurred by the board in the administration of this law shall be paid by the state auditor by warrants drawn upon the general fund.

History: En. 77-2311 by Sec. 11, Ch. 288, L. 1974.

TITLE 78—STATE CAPITOL

Chapter

2. Montana veterans and pioneers memorial building—adjunct to state capitol building, 78-201.1.
9. Future building needs, 78-910.
10. Employment security commission buildings, 78-1011 to 78-1030.
11. Insurance on state buildings, 78-1101 to 78-1103.
13. Capitol building and planning committee, 78-1301 to 78-1304.
14. Bonds for Montana college of mineral science and technology, 78-1401.

CHAPTER 2—MONTANA VETERANS AND PIONEERS MEMORIAL BUILDING —ADJUNCT TO STATE CAPITOL BUILDING

Section

78-201.1. Veterans' and pioneers' memorial building.

78-201.1. Veterans' and pioneers' memorial building. There is a veterans' and pioneers' memorial building located in Helena.

History: En. 78-201.1 by Sec. 8, Ch. 3, L. 1977.

CHAPTER 3—VETERANS' MEMORIAL MONEYS

78-302. Repealed.

Repeal

Section 78-302 (Sec. 2, Ch. 131, L. 1939; Sec. 1, Ch. 121, L. 1955; Sec. 163, Ch. 147, L. 1963; Sec. 28, Ch. 271, L. 1963), relating

to expenditure of veterans' memorial moneys, was repealed by Sec. 13, Ch. 3, Laws 1977.

CHAPTER 7—STATE CAPITOL REPAIR AND RECONSTRUCTION

78-737 to 78-746. Repealed.

Repeal

Sections 78-737 to 78-746 (Secs. 1 to 10, Ch. 257, L. 1963), relating to state

capitol repair and construction, were repealed by Sec. 11, Ch. 61, Laws 1977.

CHAPTER 9—FUTURE BUILDING NEEDS

Section

78-910. Scheduling of state building program.

78-910. Scheduling of state building program. The department of administration shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967; amd. Sec. 98, Ch. 326, L. 1974.

to schedule the state's building program in such a manner as to minimize the importance of weather on construction and to stabilize the work opportunities of the construction labor force.

Title of Act

An act to require the state controller

Amendments

The 1974 amendment substituted "de-

partment of administration" at the beginning of this section for "state controller."

CHAPTER 10—EMPLOYMENT SECURITY COMMISSION BUILDINGS**Section**

- 78-1011. Bond issue authorized for construction of addition to building.
- 78-1012. Architect—employment—construction and design.
- 78-1013. Bids—contractor's bond.
- 78-1014. Amount of bonds authorized.
- 78-1015. Interest rate—term—other provisions of bonds.
- 78-1016. Sale of bonds—registration.
- 78-1017. Payment of principal and interest.
- 78-1018. Employment security commission building account.
- 78-1019. Purchase of bonds.
- 78-1020. Budget act not applicable.
- 78-1021. Bond issue authorized for erection of additional office buildings.
- 78-1022. Architect—employment—construction and design.
- 78-1023. Bids—contractor's bond.
- 78-1024. Amount of bonds authorized.
- 78-1025. Interest rate—term—other provisions of bonds.
- 78-1026. Sale of bonds—registration.
- 78-1027. Payment of principal and interest.
- 78-1028. Employment security commission building account.
- 78-1029. Purchase of bonds.
- 78-1030. Budget act not applicable.

78-1001 to 78-1010. Repealed.**Repeal**

Sections 78-1001 to 78-1010 (Secs. 1 to 10, Ch. 196, L. 1959), relating to the issuance of bonds to erect an unemploy-

ment compensation commission building, were repealed by Sec. 11, Ch. 61, Laws 1977.

78-1011. Bond issue authorized for construction of addition to building. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of constructing an addition to the employment security commission office building presently existing on the capitol building grounds, adjacent to the capitol building, namely on lots 9 through 24, inclusive in Block 20 of the Corbin addition to the city of Helena, County of Lewis and Clark, Helena, Montana, and for the purpose of landscaping and paving around said building.

History: En. Sec. 1, Ch. 418, L. 1971.

Title of Act

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of constructing an addition to the employment security commission building located on the capitol building grounds; designating the funds from which said bonds shall be paid; provid-

ing for an employment security commission building interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

78-1012. Architect—employment—construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications, and to proceed with the constructing of an addition to the presently existing employment security commission building on the state capitol grounds, said addition to be used as office facilities by the employment security

commission within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

History: En. Sec. 2, Ch. 418, L. 1971.

78-1013. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of, and for the landscaping and paving around said addition to the employment security building, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contract.

History: En. Sec. 3, Ch. 418, L. 1971.

78-1014. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose of herein expressed shall not exceed the sum of four hundred ninety-nine thousand dollars (\$499,000).

History: En. Sec. 4, Ch. 418, L. 1971.

78-1015. Interest rate—term—other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at the current and prevailing interest rate, said interest to be payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 418, L. 1971.

78-1016. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 418, L. 1971.

78-1017. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account

in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to Section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following use of said addition to said building upon completion of erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of four hundred ninety-nine thousand dollars (\$499,000).

History: En. Sec. 7, Ch. 418, L. 1971.

78-1018. Employment security commission building account. To provide for the payment of the interest and principal of the bonds authorized by 78-1011 through 78-1020, there is created an employment security commission building account within the sinking fund in the state treasury. All sums of money dedicated and appropriated to the payment of the principal and interest of the bonds and the erection of the addition to the employment security building including the landscaping and paving around it shall be paid into that account.

History: En. Sec. 8, Ch. 418, L. 1971; amd. Sec. 1, Ch. 61, L. 1977.

Amendments

The 1977 amendment substituted "an employment security commission building account within the sinking fund in the

state treasury" for "a special fund to be known as the employment security commission building interest and sinking fund" in the first sentence; and made minor changes in phraseology and punctuation.

78-1019. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 78-1011 through 78-1020 with moneys from the investment funds, notwithstanding the provisions of 79-310.

History: En. Sec. 9, Ch. 418, L. 1971; amd. Sec. 2, Ch. 61, L. 1977.

Amendments

The 1977 amendment substituted "board of investments" for "state board of land

commissioners"; substituted "79-310" for "sections 81-1001 and 81-1006 of the Revised Codes of Montana, 1947" at the end of the section; and made minor changes in phraseology and punctuation.

78-1020. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 10, Ch. 418, L. 1971.

Separability Clause

Section 11 of Ch. 418, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 418, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

78-1021. Bond issue authorized for erection of additional office buildings. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of purchasing land, landscaping and paving said land as is necessary and for the purpose of erecting employment security commission office buildings in the following locations:

Employment security commission (employment service building), Great Falls, Montana.

Employment security commission (employment service building), addition, Billings, Montana.

Employment security commission (employment service building), Missoula, Montana.

Employment security commission (employment service building), Helena, Montana.

History: En. Sec. 1, Ch. 419, L. 1971.

Title of Act

An act to provide for the issue and sale by the state board of examiners of long-term bonds for the purpose of erecting employment security commission office buildings within the state of Montana, designating the funds from which said bonds shall be paid; providing for employ-

ment security commission interest and sinking funds; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

78-1022. Architect—employment—construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ architects to prepare plans and specifications, and to proceed with the erection of buildings of suitable construction and design for use as employment security commission buildings within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

History: En. Sec. 2, Ch. 419, L. 1971.

78-1023. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of said buildings and for the landscaping and paving around them, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require each prime contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 419, L. 1971.

78-1024. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of one million fifty-five thousand nine hundred and twenty-eight dollars (\$1,055,928).

History: En. Sec. 4, Ch. 419, L. 1971.

78-1025. Interest rate—term—other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act

shall bear interest at the prevailing rate payable annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana.

History: En. Sec. 5, Ch. 419, L. 1971.

78-1026. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 419, L. 1971.

78-1027. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following occupancy of said buildings upon completion of erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of one million fifty-five thousand nine hundred and twenty-eight dollars (\$1,055,928).

History: En. Sec. 7, Ch. 419, L. 1971.

78-1028. Employment security commission building account. To provide for the payment of the interest and principal of the bonds authorized by 78-1021 through 78-1030, there is created an employment security commission building account within the sinking fund in the state treasury. All sums of money dedicated and appropriated to the payment of the principal

and interest of the bonds and the erection of the buildings including the landscaping and paving around them shall be paid into that account.

History: En. Sec. 8, Ch. 419, L. 1971; amd. Sec. 3, Ch. 61, L. 1977.

Amendments

The 1977 amendment substituted "an employment security commission building account within the sinking fund in the

state treasury" for "a special fund to be known as the employment security commission building interest and sinking fund" in the first sentence; and made minor changes in phraseology and punctuation.

78-1029. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 78-1021 through 78-1030 with moneys from the investment funds, notwithstanding the provisions of 79-310.

History: En. Sec. 9, Ch. 419, L. 1971; amd. Sec. 4, Ch. 61, L. 1977.

Amendments

The 1977 amendment substituted "board of investments" for "state board of land

commissioners"; substituted "79-310" for "sections 81-1001 and 81-1006, R. C. M. 1947" at the end of the section; and made minor changes in phraseology and punctuation.

78-1030. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 419, L. 1971.

deemed to affect any other section or part hereof."

Separability Clause

Section 11 of Ch. 419, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

Effective Date

Section 12 of Ch. 419, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

CHAPTER 11—INSURANCE ON STATE BUILDINGS

Section

- 78-1101. Insurance on state buildings—use of proceeds.
- 78-1102. Deductible insurance plan for state buildings and contents.
- 78-1103. Administration of deductible insurance plan.

78-1101. Insurance on state buildings—use of proceeds. (1) Moneys received by the state as indemnification for damage to state buildings, except buildings procured by the department of highways by purchase or condemnation for right of way purposes, shall be deposited in the bond proceeds and insurance clearance fund. These moneys may only be:

- (a) to (c) * * * [Same as parent volume.]
- (2) * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 110, L. 1963; amd. Sec. 23, Ch. 326, L. 1974.

partment of highways" in the first sentence of the section for "state highway commission."

Amendments

The 1974 amendment substituted "de-

78-1102. Deductible insurance plan for state buildings and contents. A deductible plan of insurance may be established for use by the state in insuring state buildings and their contents.

History: En. Sec. 1, Ch. 86, L. 1971.

insurance for state buildings and their contents.

Title of Act

An act to provide a deductible plan of

78-1103. Administration of deductible insurance plan. The administration of this act shall be placed in the department of administration with the co-operation of the insurance commissioner.

History: En. Sec. 2, Ch. 86, L. 1971.

**CHAPTER 12—RECONSTRUCTION AND REPAIR OF PUBLIC BUILDINGS
AND CAPITOL BUILDING IN HELENA—CONSTRUCTION OF SUPREME
COURT AND LAW LIBRARY BUILDING**

78-1201. Repealed.

Repeal

This section (Sec. 1, Ch. 375, L. 1969), authorizing the borrowing of money for land acquisition, construction, improve-

ment and furnishing of state buildings in Helena, was repealed by Sec. 8, H.B. 2 (Appns.), Laws 1971 (1st Ex. Sess.).

78-1202, 78-1203. Repealed.

Repeal

Sections 78-1202, 78-1203 (Secs. 2, 3, Ch. 375, L. 1969; Sec. 24, Ch. 326, L. 1974; Sec. 98, Ch. 326, L. 1974), relating

to the employment of architects and acquisition of land to improve state capitol buildings, were repealed by Sec. 11, Ch. 61, Laws 1977.

78-1204 to 78-1208. Repealed.

Repeal

These sections (Secs. 4 to 8, Ch. 375, L. 1969), relating to the borrowing of money for land acquisition, construction, im-

provement and furnishing of state buildings in Helena, were repealed by Sec. 8, H.B. 2 (Appns.), Laws 1971 (1st Ex. Sess.).

78-1209. Repealed.

Repeal

Section 78-1209 (Sec. 9, Ch. 375, L. 1969), relating to applicability of budget

act to appropriations for state capitol building improvements, was repealed by Sec. 11, Ch. 61, Laws 1977.

CHAPTER 13—CAPITOL BUILDING AND PLANNING COMMITTEE

Section

78-1301. Committee created—composition—meetings.

78-1302. Function of committee—factors to be considered in master plan.

78-1303. Report to legislature.

78-1304. Per diem and mileage.

78-1301. Committee created—composition—meetings. There is hereby created a committee to be composed of seven (7) members: two (2) members of the house of representatives, appointed by the speaker on a bipartisan basis; two (2) members of the senate, appointed by the committee on committees on a bipartisan basis; the director of administration; the chairman of the city-county planning board for the city of Helena and county of Lewis and Clark, and the secretary of state. A chairman shall be selected by the members. Meetings may be called by the chairman at his discretion.

History: En. Sec. 1, Ch. 232 L. 1971; amd. Sec. 25, Ch. 326, L. 1974.

Title of Act

An act to create a capitol building and planning committee, establishing functions and guidelines under the general supervision of this legislative council; and providing an immediate effective date.

Amendments

The 1974 amendment substituted "director of administration" in the first sentence for "state controller"; deleted from the end of the second sentence "at the first meeting which shall be on or about July 9, 1971"; and made minor changes in punctuation and phraseology.

78-1302. Function of committee—factors to be considered in master plan. Function of the committee will be to establish a master plan for the orderly development of future state buildings in the state capitol area of the city of Helena, Montana. In evolving the master plan the committee shall take into consideration the following factors:

(a) The needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management and landscaping, including placement of statues, monuments, fountains or exterior lighting of buildings as may be deemed desirable for the beautification of the area.

(b) The ordinances, plans, requirements and proposed improvements of the city of Helena and the county of Lewis and Clark, including but not limited to zoning regulations, population trends and plans for rapid transit development.

(c) Any other factors which bear upon the orderly, integrated and co-operative development of the state, the city of Helena and the county of Lewis and Clark, of property in the area of the state capitol.

History: En. Sec. 2, Ch. 232, L. 1971.

78-1303. Report to legislature. The committee shall prepare a written report of its activities and recommendations and present the report to the succeeding legislature, under the general supervision of the legislative council.

History: En. Sec. 3, Ch. 232, L. 1971.

78-1304. Per diem and mileage. Legislative members are entitled to reimbursement for travel expenses as provided for in sections 59-538, 59-539, and 59-801, for days actually engaged in the work of the committee.

History: En. Sec. 4, Ch. 232, L. 1971; amd. Sec. 54, Ch. 439, L. 1975.

Amendments

The 1975 amendment substituted "reimbursement for travel expenses as provided for in sections 59-538, 59-539, and 59-801" for "twenty (\$20) dollars a day and mileage."

Effective Date

Section 5 of Ch. 232, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

CHAPTER 14—BONDS FOR MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY

Section

78-1401. Bonds for Montana college of mineral science and technology.

78-1401. Bonds for Montana college of mineral science and technology.

(1) The board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in Title 79, chapter 22, in an amount not exceeding \$2,275,000, over and above the amount of the long-range building program bonds outstanding on January 1, 1977, for the purpose of paying costs of acquiring, constructing, and equipping a physical education facility for and to be located at Montana college of mineral science and technology. The issuance and sale of the bonds shall be subject to an undertaking by the board of regents to pay to the state treasurer for deposit in the sinking fund account established pursuant to section 79-2203, from the sources hereinafter defined, amounts sufficient to pay as due the principal of and interest on the bonds; provided, however, this undertaking shall be enforceable only by the state treasurer and shall not be enforceable by the holders of such bonds. The payments by the board of regents shall be made from available revenues derived from resident and nonresident student building fees charged to students enrolled at Montana college of mineral science and technology, interest and income from lands granted by the United States of America to the state pursuant to 25 Stat. 676 for the establishment and maintenance of the college and the operation of the physical education facility, and other revenue producing residence and student union facilities at the college, subject to the prior pledge and appropriation of such revenues to the payment of other obligations of the board of regents.

(2) The proceeds of the bonds authorized by subsection (1) of this section shall be deposited in the clearance fund account created by section 79-2201(4). There is hereby appropriated from the clearance fund account the sum of \$2,275,000 for the purpose of paying costs of acquiring, constructing, and equipping the physical education facility described in subsection (1) of this section.

History: En. 78-1401 by Sec. 1, Ch. 507, L. 1977.

Title of Act

An act authorizing the board of examiners to issue and sell long-range build-

ing bonds for a physical education facility at Montana college of mineral science and technology and appropriating \$2,275,000 for that purpose from the proceeds of the sale of those bonds.

TITLE 79—STATE FINANCE

Chapter

1. General fiscal duties of state auditor, 79-101, 79-102, 79-108, 79-109.
2. General fiscal duties of state treasurer, 79-201, 79-202, 79-208, 79-211.
3. Deposit and investment of state funds, 79-301, 79-302, 79-306 to 79-311.
4. Treasury fund structure, 79-410, 79-413 to 79-415.
6. Perpetual appropriations for support of state institutions—contingent revolving accounts, 79-601 to 79-603.
9. Expenditures by state departments in excess of income prohibited, 79-901.
10. State Budget Act, 79-1001, 79-1012 to 79-1012.5, 79-1013 to 79-1018, 79-1020 to 79-1022.
11. Purchase of state general fund warrants, 79-1101, 79-1105.
12. Montana trust and legacy fund—unified investment plan, 79-1212, 79-1215.
14. Investment income of state institutions, 79-1401.
17. Bonds of state and taxing units—amortization preferred—fiscal agencies for payment, Repealed—Section 11, Chapter 61, Laws of 1977.
20. Bond Validating Act, 79-2001 to 79-2005.
22. Long-range building program bonds, 79-2201 to 79-2205.
23. Legislative Audit Act, 79-2301, 79-2302, 79-2303.1, 79-2304, 79-2305, 79-2307 to 79-2312, 79-2314, 79-2315.
24. Reimbursement of general funds for costs of central services, Repealed—Section 103, Chapter 326, Laws of 1974; Section 4, Chapter 223, Laws of 1975.
25. Emergency and disaster fund, 79-2501 to 79-2503.
26. Interest on bonds and special assessments of political subdivisions, 79-2601 to 79-2603.
27. Federal Assistance Management Act, 79-2702 to 79-2708.

CHAPTER 1—GENERAL FISCAL DUTIES OF STATE AUDITOR

Section

- 79-101. State auditor—general fiscal duties.
- 79-102. Certificate of settlement.
- 79-108. Warrants—presentation—cancellation—reissue.
- 79-109. Issuance of duplicate warrant.

79-101. (151) State auditor—general fiscal duties. It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.
2. When requested, to give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or the duties of his office.
3. To suggest plans for the improvement and management of the public revenues.
4. To keep an account of all warrants drawn upon the treasurer, and such other account and appropriation records that he determines to be essential for the support of the accounting records maintained in the office of the department of administration.
5. To keep an account between the state and the state treasurer, and therein charge the state treasurer with the balance in the treasury when he came into office, and with all moneys, received by him, and credit him with all warrants drawn on and paid by him.
6. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, and the date issued.

7. In his discretion to examine and settle the accounts of persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith.

8. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

9. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

10. In his discretion to inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public moneys.

11. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render statements at such times and in such form as he may require.

12. In his discretion to examine the collection of moneys due the state, and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and failed to pay over or deliver the same, and against debtors of the state; of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

13. In his discretion, to offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The state auditor may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the state auditor, in his discretion, shall determine. If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the department of administration it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided.

14. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law.

15. To authenticate with his official seal all warrants drawn by him, and all copies of papers issued from his office.

16. In his discretion promulgate rules and regulations regarding the distribution and processing of warrants issued.

17. In his discretion establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system

of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the credit of the general fund. Funds collected for new or unforeseen programs may be deposited to the credit of a revolving fund account and expended for the purposes of paying the processing expenses incurred as a result of the new program.

18. To collect and pay into the state treasury all fees received by him.

19. To perform such other duties as are prescribed by law.

20. In his discretion to establish, under the joint control of the department of administration and the state auditor, a system of filing and storage of the original copy of claims paid by state warrant.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1969; amd. Sec. 98, Ch. 326, L. 1974. Cal. Pol. C. Sec. 433.

Amendments

The 1969 amendment deleted former subdivisions 2, 3, 6, 10, 18, and 19, for text of which see parent volume; redesignated former subdivisions 4 and 5 as 2 and 3; redesignated former subdivision 7 as 4 and substituted "and such other account * * * state controller" for "and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation"; redesignated former subdivision 8 as 5; redesignated former subdivision 9 as 6, and substituted "and the date issued" for "for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered"; redesignated former subdivision 11 as 7, and

inserted "In his discretion" at the beginning; redesignated former subdivisions 12 through 15 as 8 through 11; redesignated former subdivision 16 as 12, and substituted "In his discretion to examine" for "To direct and superintend" at the beginning and deleted "all" before "moneys" and "debtors"; inserted new paragraph 13; redesignated former subdivision 17 as 14, and deleted ", and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof"; redesignated former subdivision 20 as 15, and deleted "drafts and" before "warrants drawn"; inserted new subdivisions 16 and 17; redesignated former subdivisions 21 and 22 as 18 and 19; and added new subdivision 20.

The 1974 amendment substituted "department of administration" in subdivisions 4, 13, and 20 for "state controller."

79-102. (152) Certificate of settlement. The certificate mentioned in subdivision 7, of section 79-101, must show by whom the payment is to be made; the amount thereof, and the fund into which it is to be paid, and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 152, R. C. M. 1921; amd. Sec. 2, Ch. 94, L. 1969. Cal. Pol. C. Sec. 434.

Amendments

The 1969 amendment substituted "subdivision 7" for "subdivision 11" before "of section 79-101."

79-104. (154) Order in which warrants must be drawn.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

this section for "state controller" and "controller."

79-107. Repealed.

Repeal

Section 79-107 (Sec. 427, Pol. C. 1895), relating to auditor's execution of an of-

ficial bond, was repealed by Sec. 5, Ch. 94, Laws 1969.

79-108. (158) Warrants—presentation—cancellation—reissue. (1) All warrants drawn by the state auditor on the state treasury shall be presented for payment within 1 year after the date of the issue thereof. Should the payee or legal holder of any warrant fail to present it for payment within the time specified, the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to a separate agency fund account administered by the state auditor. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment within 4 years from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof.

(2) Three years after cancellation, the warrant shall be classed as unclaimed property subject to the provisions of Title 67, chapter 22. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment, such presentation shall be to the department of revenue as provided in 67-2219.

History: En. Sec. 1, Ch. 80, L. 1907; Sec. 178, Rev. C. 1907; re-en. Sec. 158, R. C. M. 1921; amd. Sec. 3, Ch. 94, L. 1969; amd. Sec. 1, Ch. 276, L. 1977.

Amendments

The 1969 amendment rewrote this section to extend time for presenting warrants from six months to one year. For previous text, see parent volume.

The 1977 amendment inserted the subsection (1) designation; substituted "a separate agency fund account administered by the state auditor" for "the account from which it was drawn" at the end of the second sentence of subsection (1); de-

leted "in the event the warrant has been lost or destroyed, the payee" in the third sentence of subsection (1) before "present a claim for payment"; substituted "within 4 years" for "after the lapse of one (1) year" in the third sentence of subsection (1); deleted "and the state treasurer is authorized to pay the new warrant" from the end of the third sentence of subsection (1); deleted a former fourth sentence of subsection (1) which provided that the state auditor would furnish the state treasurer with a list of warrants canceled under this section; added subsection (2); and made minor changes in phraseology, punctuation and style.

79-109. (159) Issuance of duplicate warrant. (1) The state auditor may issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and, except as herein provided, no such warrant may be issued or delivered unless the person entitled to receive the same deposits with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana and its officers harmless on account of the issuance of the duplicate warrant.

(2) No bond of indemnity is required:

(a) when the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) when the owner or custodian is the state of Montana or any agency or officer thereof;

(c) when the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) when the amount of the lost or destroyed warrant is less than \$100;

(e) when it can be established that a crime has been committed and as a result of such crime that a state of Montana warrant has been stolen or destroyed;

(f) when it can be established that a state of Montana warrant has been mailed to an incorrect payee; or

(g) when the payee is a vendor or contractor doing business with the state of Montana.

(3) Whenever the owner or custodian applies under the provisions of subsections (2)(e), (2)(f), or (2)(g), a stop-payment order shall be placed on the original warrant by the state auditor.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application shall include an agreement to indemnify and hold harmless the state or its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R. C. M. 1921; amd. Sec. 4, Ch. 94, L. 1969; amd. Sec. 1, Ch. 318, L. 1977.

Amendments

The 1969 amendment designated the former section as subsection A, inserted "except as herein provided" before "no such warrant" and deleted "by the state auditor" after "issued or delivered" in the second sentence; and added subsection B.

The 1977 amendment redesignated former subsections A and B as subsections (1) and (2); redesignated former subdivisions B(1) to B(4) as subdivisions (2)(a) to (2)(d); increased the amount spec-

ified in subdivision (2)(d) from \$50 to \$100; inserted subdivisions (2)(e) to (2)(g) and subsection (3); redesignated a former proviso to subsection B as subsection (4); and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 5 of Ch. 94, Laws 1969 read "Section 79-107, R. C. M. 1947, is repealed."

Effective Date

Section 6 of Ch. 94, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

79-110. (160) Repealed.

Repeal

Section 79-110 (Sec. 160, R. C. M. 1921), relating to state auditor as ex officio in-

vestment commissioner, was repealed by Sec. 11, Ch. 61, Laws 1977.

CHAPTER 2—GENERAL FISCAL DUTIES OF STATE TREASURER

Section

79-201. State treasurer—general fiscal duties.

79-202. State moneys, how expended by treasurer.

79-208. Payment, registry, and interest.

79-211. Deposit of gas and oil royalties from federal government in highway account.

79-201. (174) State treasurer—general fiscal duties. The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and it is the duty of the state treasurer:

1. To receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person.

2. To issue receipts which must be consecutively numbered beginning with number one at the commencement of each fiscal year for all sums of money which shall be paid into the treasury, and to deliver a copy of every such receipt to the person making such payment, the state auditor and the state controller.

3. To pay warrants out of the funds upon which they are drawn.

4. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid.

5. To keep an account of all moneys received and disbursed.

6. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

7. To discharge such other duties as may be imposed upon him by law.

8. Securities may be placed in safekeeping with banks subject to national supervision or Montana state examination and a safekeeping receipt may be accepted in lieu of the actual securities. Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R. C. M. 1921; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973. Cal. Pol. C. Sec. 452.

Amendments

The 1971 amendment inserted "The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and" at the beginning of the section; substituted "account for" for "keep" in subdivision (1); substituted "not expressly required by law" for "and not required" in subdivision (1); deleted a former subdivision (2), for text of which see parent volume; substituted a new subdivision (2) for former subdivision (3), for text of which

see parent volume; redesignated former subdivisions (4), (5) and (6) as (3), (4) and (5); deleted "and in the order" before "in which they are drawn" at the end of subdivision (3); deleted "and file and preserve the same" from the end of subdivision (4); deleted former subdivisions (7), (8), (10) and (11) for text of which see parent volume; and redesignated former subdivisions (9) and (12) as subdivisions (6) and (7), respectively.

The 1973 amendment added subdivision 8.

Effective Date

Section 2 of Ch. 269, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

79-202. (193) State moneys, how expended by treasurer. Except as herein provided no moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer except upon a claim duly approved by the department of administration in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R. C. M. 1921; amd. Sec. 6, Ch. 97, L. 1961; amd. Sec. 2, Ch. 152, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1971 amendment inserted "Except as herein provided" at the beginning of the section; and substituted "except upon a claim duly approved by the state con-

troller in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer" at the end of the section for "save by virtue of unexhausted appropriations therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state controller, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature

for the administering of any specific trust funds administered by any state board, commission or department."

The 1974 amendment substituted "element of administration" in this section for "state controller."

Repealing Clause

Section 3 of Ch. 152, Laws 1971 read "Sections 79-801, 79-804, 79-806, 79-807, 79-808, and 79-810, R. C. M., 1947, are repealed."

Effective Date

Section 4 of Ch. 152, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

79-208. (180) Payment, registry, and interest. (1) The state treasurer shall on the presentation of state warrants regularly issued pay the same out of any funds available for such payments, and in the event there are no funds available for such payment, he must register each warrant in a book or register to be kept for that purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, and the number and amount thereof and endorse on each warrant so registered, on its face, "presented for payment and not paid for want of funds and registered in this office this day of", inserting the date of registration, and he shall affix his signature as such treasurer thereto. All warrants so registered and endorsed on and after March 1, 1927, shall bear interest at the rate of 4% a year until called for payment, after date of which call interest shall cease. All warrants shall be redeemed and paid in the order of their registration.

History: En. Sec. 1, p. 98, L. 1899; re-en. Sec. 181, Rev. C. 1907; amd. Sec. 1, Ch. 260, L. 1921; amd. Sec. 1, Ch. 6, Ex. L. 1921; re-en. Sec. 180, R. C. M. 1921; amd. Sec. 1, Ch. 159, L. 1923; amd. Sec. 1, Ch. 111, L. 1925; amd. Sec. 1, Ch. 2, L. 1927; amd. Sec. 5, Ch. 61, L. 1977.

Amendments

The 1977 amendment deleted "and in the manner set forth in section 79-801" at the end of the section; and made minor changes in phraseology, punctuation and style.

79-211. Deposit of gas and oil royalties from federal government in highway account. It shall be the duty of the state treasurer to pay 37½% of the moneys received from the treasurer of the United States as the state's share of gas, oil, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended, to the state highway account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 246, L. 1973; amd. Sec. 1, Ch. 357, L. 1977.

Title of Act

An act requiring the state treasurer to credit the state highway account in the earmarked revenue fund with moneys received under the act of Congress of February 25, 1920.

Amendments

The 1977 amendment substituted "37 ½%" for "one-half (½)"; inserted "and other mineral"; substituted "federal Mineral Lands Leasing Act, as amended" for "act of Congress of February 25, 1920"; and made minor changes in punctuation.

CHAPTER 3—DEPOSIT AND INVESTMENT OF STATE FUNDS

Section

- 79-301. Deposit of funds in the hands of the state treasurer.
- 79-302. Interest requirements on Montana public funds—federal conformity.
- 79-306. State treasurer as treasurer of state agencies—deposits of moneys.
- 79-307. Security for deposits of public funds.
- 79-308. Unified investment program for public funds.
- 79-309. Investment funds.
- 79-310. Permissible investments.
- 79-311. Investment of local government funds.

79-301. (182) Deposit of funds in the hands of the state treasurer. (1)

Under the direction of the board of investments, the state treasurer shall deposit public moneys in his possession and under his control in solvent banks, building and loan associations, and savings and loan associations located in the state, except as otherwise provided by law, subject to national supervision or state examination. The board of investments may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, and savings and loan associations and the board of investments, which rate shall be fixed semiannually during the months of July and January of each year.

(2) No such deposits in excess of the amount insured by the federal deposit insurance corporation or federal savings and loan insurance corporation shall be made unless the bank, building and loan association and savings and loan association first delivers to the state treasurer or deposits in trust with some solvent bank as hereinafter provided, as security therefor, bonds or other obligations of the kinds listed in section 4 [79-307] of this act, having a market value at least equal to the amount of such deposits in excess of the amount so insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustees' receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the trustee have been approved by the board of investments.

(3) When moneys have been deposited, under the board of investments and in accordance with the law, the treasurer is not liable for loss on account of any such deposit occurring from any cause other than his own neglect or fraud. The state treasurer shall deposit funds in such banks, building and loan associations and savings and loan associations, and in such amounts as may be designated by the board of investments, and withdraw such deposits when instructed to by the board of investments. The state treasurer shall withdraw all deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state, duly presented to him in accordance with the law.

(4) Any bank, building and loan association and savings and loan association pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall conform to section 4 [79-307] of this act and have a market value at least sufficient for compliance with subsection (2) above. If the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the

state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository bank.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974.

Amendments

The 1969 amendment extended subsection (2) to include as authorized securities several different kinds of federal agency securities, state and county general obligation bonds from other states, and certain types of corporate bonds.

The 1973 amendment inserted "Under the direction of the board of investments" at the beginning of subsection (1); deleted "as designated by the state depository board, and no other" from the end of the first sentence of subsection (1); implemented the transfer of functions from the state depository board and the state examiner to the board of investments; deleted from the second sentence of subsection (1) a clause relating to the first rate-fixing date; substituted "insured by the federal deposit insurance corporation" near the beginning of subsection (2) for "guaranteed or insured according to law"; substituted "bonds or other obligations of the kinds listed in section 79-307, having a market value at least equal to the amount of such deposits in excess of the amount so

insured" in subsection (2) for an itemized list of acceptable securities; deleted subsection (3), for text of which see parent volume; redesignated subsections (4) and (5) as (3) and (4); deleted "through damage by the elements, or" before "from any cause" in the first sentence of subsection (3); deleted "or dishonorable conduct" at the end of the first sentence of subsection (3); substituted "shall withdraw" in the third sentence of subsection (3) for "shall have the authority . . . to withdraw"; deleted from subsection (3) a final sentence preserving the right of the board of land commissioners to invest in otherwise lawful securities; substituted the second sentence of subsection (4) for sentences requiring that substituted collateral "be approved by the state depository board at its next official meeting" and "be at least equal in principal amount to the securities for which substitution is made"; and made numerous minor changes in phraseology and style.

The 1974 amendment inserted "building and loan associations, and savings and loan associations" after "banks" throughout the section; inserted "or federal savings and loan insurance corporation" in the first sentence of subsection (2); deleted "the direction of" before "the board of investments" near the beginning of subsection (3); and made a minor change in punctuation.

79-302. Interest requirements on Montana public funds—federal conformity. The interest requirements on deposits of public funds under the laws of the state of Montana or otherwise by county, city and town treasurers shall not at any time be in violation of any act of the Congress of the United States or of any rule or regulation of the federal reserve system, Federal Home Loan Bank System, or the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or any other fiscal agency of the United States or created by it, of which the banks, building and loan associations or savings and loan associations of this state generally may be members or debtors.

History: En. Sec. 1, Ch. 104, L. 1937; amd. Sec. 2, Ch. 14, L. 1974.

Amendments

The 1974 amendment inserted "Federal Home Loan Bank System" and "Federal

Savings and Loan Insurance Corporation" near the middle of the section; and inserted "building and loan associations or savings and loan associations" near the end of the section.

79-303, 79-304. (182.1) Repealed.

Repeal

Sections 79-303 and 79-304 (Sec. 1, Ch. 64, L. 1935; Sec. 1, Ch. 81, L. 1937; Sec. 1, Ch. 68, L. 1941; Sec. 1, Ch. 101, L.

1945; Secs. 4, 5, Ch. 176, L. 1953; Sec. 10, Ch. 147, L. 1963), relating to investment of state funds, were repealed by Sec. 2, Ch. 205, Laws 1971.

79-305. (270) Repealed.**Repeal**

Section 79-305 (Sec. 1, Ch. 1, L. 1921; Sec. 1, Ch. 122, L. 1925; Sec. 6, Ch. 176, L. 1953; Sec. 26, Ch. 326, L. 1974; Sec. 6,

Ch. 61, L. 1977), relating to investment of funds not immediately needed, was repealed by Sec. 19, Ch. 343, Laws 1977.

79-306. (192) State treasurer as treasurer of state agencies—deposits of moneys. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all moneys, credits, evidences of indebtedness, and securities either in banks, building and loan associations or savings and loan associations located in the city or town in which the agencies and institutions are situated if there is a qualified bank, building and loan association or savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments, or with the state treasurer. Such banks, building and loan association or savings and loan association shall pledge securities sufficient to cover the deposits at all times, and the deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and shall draw interest as other state moneys, in accordance with the provisions of sections 79-301 and 79-302.

(3) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

(4) All moneys, credits, evidences of indebtedness, and securities received by a state agency or institution shall be deposited either with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds \$100 or total collections exceed \$500. All moneys, credits, evidences of indebtedness, and securities collected shall be deposited at least weekly.

History: En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1931; amd. Sec. 9, Ch. 147, L. 1963; amd. Sec. 2, Ch. 298, L. 1973; amd. Sec. 3, Ch. 14, L. 1974; amd. Sec. 4, Ch. 286, L. 1977.

indemnifying bonds" following "Such bank shall" near the beginning of the second sentence in subsection (2); inserted "in accordance with the provisions of sections 79-301 and 79-302" at the end of the second sentence in subsection (2); deleted the third sentence of subsection (2); added subsection (3); and made minor changes in style and phraseology.

The 1974 amendment inserted references to building and loan associations and savings and loan associations throughout the section after references to banks; and made a minor change in phraseology.

The 1977 amendment deleted "daily" after "shall deposit" in the first sentence of subsection (2); and added subsection (4).

Amendments

The 1973 amendment deleted from subsection (1) a second sentence requiring departments located in the capitol to make daily deposits with the treasurer; deleted "not located in the capitol" following "agencies and institutions" near the beginning of subsection (2); substituted "board of investments" for "state depository board" near the end of the first sentence in subsection (2); deleted "furnish

79-307. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

- (1) direct obligations of the United States;
- (2) securities as to which the payment of principal and interest is guaranteed by the United States;
- (3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:
 - (a) commodity credit corporation;
 - (b) federal intermediate credit banks;
 - (c) federal land bank;
 - (d) bank for cooperatives;
 - (e) federal home loan banks;
 - (f) federal national mortgage association;
 - (g) government national mortgage association;
 - (h) small business administration; and
 - (i) federal housing administration (not including insured mortgages);
- (4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;
- (5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision;
- (6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state, issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;
- (7) obligations of housing authorities of the state, secured by a pledge of annual contributions or by a loan agreement, made by the United States or any agency thereof, providing for contributions or a loan sufficient, with other funds pledged, to pay the principal of and interest on the obligations when due;
- (8) general obligation bonds of other states and of municipalities and counties of other states; and
- (9) undertaking or guarantees issued by a surety company authorized to do business in the state.

History: En. Sec. 4, Ch. 298, L. 1973; amd. Sec. 2, Ch. 160, L. 1975; amd. Sec. 1, Ch. 92, L. 1977.

81-1001 through 81-1008, R. C. M. 1947; and amending section 79-1215, R. C. M. 1947.

Title of Act

An act to amend sections 79-301, 79-306, and 79-601, R. C. M. 1947, for the codification and general revision of the laws relating to the deposit of state funds and the unified investment program for public funds as required by article VIII, section 13 of the 1972 Montana constitution; and to repeal sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216, and sections

Amendments

The 1975 amendment inserted "or guarantees may be issued" in the introductory phrase; added subdivision (8); and made minor changes in phraseology.

The 1977 amendment inserted subdivision (5); and redesignated former subdivisions (5) through (8) as subdivisions (6) through (9).

79-308. Unified investment program for public funds. (1) The uniform investment program directed by article VIII, section 13, of the 1972

Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the rules provided in this chapter, and with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

(2) All state funds shall be invested and reinvested in securities enumerated in section 7 [79-310] of this act, to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) (a) The board of investments may execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 79-310, when full payment has been received therefor.

(b) The board of investments may:

(i) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to sections 79-301 and 79-306;

(ii) direct the sale of any securities in the program at their full and true value, when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(4) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund, and of the participation of each treasury fund account therein, and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(5) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the trust and legacy fund shall be paid from income otherwise receivable from the pooled investment fund; and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds.

History: En. Sec. 5, Ch. 298, L. 1973;
amd. Sec. 1, Ch. 203, L. 1977.

Amendments

The 1977 amendment inserted subdivision (3)(a); and redesignated former subdivisions (3)(a) and (b) as (3)(b)(i) and (ii).

79-309. Investment funds. For each treasury fund account into which state funds are segregated by the department of administration pursuant to section 79-413, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department. However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest or devise from which the fund account originates to be invested shall be pooled in an account to be designated "Treasury Cash Account" and placed in one of the investment funds designated below. The share of the income for this account shall be credited to the general fund. If within the list hereinafter of separate investment funds, more than one investment fund is included

which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata. Separate investment funds shall be maintained as follows:

(1) the trust and legacy fund, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, article X, of the 1972 Montana constitution, and all money referred to in section 79-410(8);

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in title 31, chapter 2;

(b) the public employees' retirement system described in title 68;

(c) the game wardens' retirement system described in title 68, chapter 14;

(d) the teachers' retirement system described in title 75, chapter 62; and

(e) the industrial accident insurance program described in title 92, chapter 11;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by section 79-410;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment, and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions;

(5) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution. The principal of this trust fund shall be permanent and invested in the permissible investments enumerated in 79-310. In the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

(6) such additional investment funds as may be expressly required by law, or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

History: En. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977.

vision (5); redesignated former subdivision (5) as subdivision (6); and made minor changes in style.

Amendments

The 1977 amendment inserted subdi-

79-310. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in 79-309, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 79-307 of this act;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States, or in Canada if the obligations purchased are payable in United States dollars; provided that all investments under subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one (1) nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less; and

(ii) the issuing corporation, or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within 1 year, of at least $1\frac{1}{2}$ to 1; and had received net income averaging \$1 million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund, or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of \$500 million;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in the state of Montana, provided, however, that the board of investments shall require pledged securities as specified in section 79-301; interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds;

(f) unencumbered real property, first mortgages and participations in first mortgages on unencumbered real property, provided that:

(i) no such mortgage or mortgage participation may be purchased unless:

(A) the principal amount of the loan secured by the mortgage or mortgage participation is 80% or less of the appraised value of the property; or

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer; or

(C) 25% or more of the loan or participation therein secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person,

firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan, or participation therein by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund, shall be restricted to fixed income securities described in subsections (a) to (e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than \$10 million; and

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of five (5) consecutive years immediately before the date of investment, have been at least $1\frac{1}{2}$ times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock,

(i) the stock has paid cash dividends in each of at least 5 years immediately before it is purchased; and

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than 2% of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in paragraphs (i) and (ii) above, so long as the corporation maintains the asset value required in subsection (a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 20% of the book value of such fund, or would cause the stock of one corporation to exceed 1% of the book value of such retirement fund.

(4) The state board of investments shall endeavor to direct the state's investment business to those investment firms, and/or banks, which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state of Montana. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

History: En. Sec. 7, Ch. 298, L. 1973; amd. Sec. 1, Ch. 92, L. 1974; amd. Sec. 1, Ch. 228, L. 1974; amd. Sec. 1, Ch. 316, L. 1977.

Amendments

Chapter 92, Laws of 1974, substituted "79-309" for "section 6" near the beginning of subsection (1); substituted "79-

307" for "section 4" in subsection (1)(a); and inserted "building and loan associations, and savings and loan associations" near the beginning of subsection (1)(e).

Chapter 228, Laws of 1974, added subsection (4).

The 1977 amendment inserted "and participations in first mortgages" in the introductory clause of subdivision (1)(f);

inserted "or mortgage participation" in subdivisions (1)(f)(i) and (1)(f)(i)(A); increased the percentage specified in subdivision (1)(f)(i)(A) from 75% to 80%; inserted subdivisions (1)(f)(i)(B); re-designated former subdivisions (1)(f)(i)(B) and (1)(f)(i)(C) as subdivisions (1)

(f)(i)(C) and (1)(f)(i)(D); reduced the percentage specified in subdivision (1)(f)(i)(C) from 30% to 25%; inserted "or participation therein" in subdivisions (1)(f)(i)(C) and (1)(f)(i)(D); and made minor changes in phraseology, punctuation and style.

79-311. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment, and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner, may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each such participant in the fund, shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report shall be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction shall be furnished to any participant upon request.

(3) The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the pooled investment fund shall be subject to payment at any time from the fund upon request. Accumulated income shall be remitted to each participant at least annually.

(4) No order or warrant shall be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, and if any such order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated, and the state treasurer shall be liable under his official bond for any amount not so reimbursed.

History: En. Sec. 8, Ch. 298, L. 1973.

Repealing Clause

Section 9 of Ch. 298, Laws 1973 read

"Sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216 and sections 81-1001 through 81-1008, R. C. M. 1947, are repealed."

CHAPTER 4—TREASURY FUND STRUCTURE

Section

79-410. Fund structure.

79-413. Creation and abolition of new accounts.

79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures.

79-415. Appropriation and disbursement of moneys from the treasury.

79-410. Fund structure. There are in the state treasury only the following funds:

(1) to (6). * * * [Same as parent volume.]

(7) Revolving fund. The revolving fund consists of moneys used to

(a) Defray reimbursable expenditures, and

(b) Supply working capital for enterprise-type operations.

(8) and (9). * * * [Same as parent volume.]

(10) University current fund. The university current fund consists of moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the university current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(a) The unrestricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(b) The restricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(c) The designated subfund segregates that portion of the university current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(d) The auxiliary subfund segregates that portion of the university current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(11) University student loan fund. The university student loan fund consists of moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system.

(12) University endowment fund. The university endowment fund consists of moneys deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(13) University annuity and life income fund. The annuity and life income fund consists of moneys deposited in the state treasury by the Montana university system under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time.

(14) University plant fund. The university plant fund consists of those financial resources allocated to or received by the Montana university

system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities.

(15) University agency fund. The university agency fund consists of moneys deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

History: En. Sec. 2, Ch. 147, L. 1963; amd. Sec. 1, Ch. 321, L. 1973; amd. Sec. 1, Ch. 438, L. 1977.

Amendments

The 1973 amendment deleted former subdivision (7)(b); and redesignated former clauses (7)(a)(i) and (7)(a)(ii) as (7)(a) and (7)(b).

The 1977 amendment added subdivisions (10) through (15).

Sunset Provision

Section 2, Ch. 438, Laws of 1977 read "The additional funds established by subsections (10) through (15) of 79-410 are effective only through June 30, 1981, at which time they shall cease to exist as a part of the treasury fund structure."

Effective Date

Section 3 of Ch. 438, Laws 1977 provided the act should be effective on its passage and approval. Approved April 19, 1977.

79-413. Creation and abolition of new accounts. Moneys deposited in each fund except the general fund shall be segregated by the department of administration by specific accounts based on source, function, or department. When moneys deposited in the state treasury cannot logically be credited to an existing account, or when it is impractical or undesirable for an agency of state government to segregate moneys in its own accounts, the department of administration, in its discretion, may create new accounts consistent with the definitions in section 79-410. However, the department of administration shall create as few new accounts as practicable. The department of administration shall periodically examine all accounts, and shall abolish or consolidate inactive or unnecessary accounts.

History: En. Sec. 5, Ch. 147, L. 1963; amd. Sec. 27, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to "department of administration" throughout this section for references to "state controller"; and made minor changes in punctuation and phraseology.

79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures. (1) * * * [Same as parent volume.]

(2) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds, and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(3) When the expenditure of an appropriation is necessary, and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other

accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred, and provided the loan is recorded in the state accounting records. No account shall be so impaired that all proper demands thereon cannot be met.

(4) When moneys have been appropriated from several sources for the operation of a state agency, the department of administration may establish an account to receive, hold and disburse moneys appropriated for the operation of the agency and regulate the transfer of moneys to the account in accordance with the laws governing the expenditure of state moneys.

History: En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974.

The 1974 amendment substituted "department of administration" in subsections (2) through (4) for "state controller" and "controller."

Amendments

The 1971 amendment added subsections (3) and (4).

79-415. Appropriation and disbursement of moneys from the treasury.

(1) Moneys deposited in the general fund, the earmarked revenue fund, and the federal and private revenue fund, with the exception of trust income and refunds authorized in subsection (3) of this act, shall be paid out of the treasury only on appropriation made by law. Moneys deposited in the revolving fund for the purpose of financing administrative operations shall be paid out of the treasury only by appropriation made by law. Moneys deposited in the revolving fund for the purpose of purchasing consumable or depreciable assets may be expended within the limitations of an annual financial plan approved by the department of administration.

(2) * * * [Same as parent volume.]

(3) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it, and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration.

(4) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest and no fund shall be so impaired that all proper demands thereon cannot be met.

History: En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974.

The 1973 amendment deleted "the revolving fund" following "earmarked revenue fund" in subsection (1); and added the second sentence to subsection (1).

The 1974 amendment substituted "department of administration" at the end of subsection (3) for "state controller."

Amendments

The 1971 amendment inserted "and refunds authorized in subsection (3) of this act" in subsection (1); and added subsections (3) and (4).

CHAPTER 6—PERPETUAL APPROPRIATIONS FOR SUPPORT OF STATE INSTITUTIONS—CONTINGENT REVOLVING ACCOUNTS

Section

79-601. Support of state institutions.

79-602. Contingent revolving accounts—when established.

79-603. Retention of agency moneys.

79-601. (194) Support of state institutions. For the support and endowment of each state institution there is annually and perpetually appropriated the income from all permanent endowments therefor and from all land grants as provided by law. All moneys received or collected in connection with such endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system, and for the refunding of such obligations, or moneys which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

History: En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R. C. M. 1921; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963; amd. Sec. 3, Ch. 298, L. 1973.

Amendments

The 1973 amendment combined the former preliminary paragraph and former paragraph 1 into one paragraph; inserted "in connection with such endowments"

near the beginning of the second sentence; substituted "obligations incurred for the purchase, construction, equipment, or improvement of the facilities at units of the Montana university system, and for the refunding of such obligations" for "bonds issued in connection with the construction of buildings" near the end of the second sentence; and made minor changes in style and phraseology.

79-602. (195) Contingent revolving accounts—when established. The department of administration may authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, such as payment of minor invoices, invoices for which discount period is too short to take advantage of the discount if payment is made by warrant, freight and express charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the department of administration. But each and every state institution granted a contingent revolving account shall report to the department of administration monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The department of administration may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R. C. M. 1921; amd. Sec. 9, Ch. 80, L. 1961; amd. Sec. 1, Ch. 148, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1969 amendment inserted "such as payment of minor invoices * * * cash change funds, all" after "demands requir-

ing immediate cash payment" in the first sentence.

The 1974 amendment substituted "department of administration" throughout this section for "state controller."

79-603. (196) Retention of agency moneys. The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, moneys that would otherwise be deposited in the agency fund as defined in 79-410. The department of administration may cancel this permission and require the deposit of the moneys with the state treasurer. However, the state treasurer, with the consent of the board of investments, shall designate depositories for the moneys and securities and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R. C. M. 1921; amd. Sec. 2, Ch. 157, L. 1931; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971; amd. Sec. 28, Ch. 326, L. 1974; amd. Sec. 7, Ch. 61, L. 1977.

Amendments

The 1971 amendment substituted "agency" for "institution" in the first sentence; substituted "moneys that * * * structure act" at the end of the first sentence for "incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to

refund to the depositors on demand or otherwise"; substituted "moneys" in the second and third sentences for "funds"; and made a minor change in punctuation.

The 1974 amendment substituted references to "department of administration" in the first and second sentences for references to "state controller"; and made minor changes in punctuation and phraseology.

The 1977 amendment substituted "79-410" for "the treasury fund structure act" at the end of the first sentence; substituted "board of investments" for "state depository board" in the third sentence; and made a minor change in punctuation.

CHAPTER 8—MISCELLANEOUS POWERS AND DUTIES OF STATE TREASURER—SUSPENSION

79-801. (183) Repealed.

Repeal

Section 79-801 (Sec. 444, Pol. C. 1895), relating to posting of warrants for re-

demption, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-802. (184) Repealed.

Repeal

Section 79-802 (Sec. 445, Pol. C. 1895), relating to the inspection of the treas-

urer's books, was repealed by Sec. 11, Ch. 61, Laws 1977.

79-804. (185) Repealed.

Repeal

Section 79-804 (Sec. 1, Ch. 5, L. 1909), relating to a stenographer for the state

treasurer, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-806 to 79-808. (187.1 to 187.3) Repealed.

Repeal

Sections 79-806 to 79-808 (Secs. 1 to 3, Ch. 6, L. 1925), relating to accounting and

the state treasurer's reports, were repealed by Sec. 3, Ch. 152, Laws 1971.

79-810. (189) Repealed.**Repeal**

Section 79-810 (Sec. 3, Ch. 141, L. 1907),

relating to reports of depositories, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-811, 79-812. (190, 191) Repealed.**Repeal**

Sections 79-811, 79-812 (Secs. 450, 451, Pol. C. 1895; secs. 60, 61, Ch. 359, L.

1977), relating to suspension of treasurer, were repealed by Sec. 11, Ch. 61, Laws 1977.

79-813. (197.1) Repealed.**Repeal**

Section 79-813 (Sec. 1, Ch. 58, L. 1931; Sec. 13, Ch. 147, L. 1963), relating to sale

of property from escheated estates, was repealed by Sec. 1, Ch. 117, Laws 1973.

CHAPTER 9—EXPENDITURES BY STATE DEPARTMENTS IN EXCESS OF INCOME PROHIBITED

Section

79-901. State officers and institutions—limit on expenditures.

79-901. State officers and institutions—limit on expenditures. It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state, or for any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or for any supervisory board or authority either directly or indirectly to authorize, direct or order any such institution, officer, department, board, commission or bureau to increase any expenditures, except as specifically provided by law, and it shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income.

History: En. Sec. 1, Ch. 40, L. 1937; amd. Sec. 2, Ch. 82, L. 1961; amd. Sec. 11, Ch. 343, L. 1977.

Amendments

The 1977 amendment deleted "the state board of examiners, or" before "any supervisory board" near the middle of the section.

CHAPTER 10—STATE BUDGET ACT

Section

79-1001. Chapter to be cited, how.

79-1006, 79-1007. [Transferred.]

79-1011. [Transferred.]

79-1012. Governor chief budget officer—appointment of budget director.

79-1012.1. Definitions.

79-1012.2. Program for planning and budgeting system.

79-1012.3. Program budget.

79-1012.4. Long-range building program.

79-1012.5. Variance reports.

- 79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.
- 79-1014. Preliminary budget—preparation—submission to governor and governor-elect.
- 79-1015. Submission of budget to legislature—form—contents.
- 79-1015.1. Legislative action.
- 79-1015.2. Right of officers to appear on consideration of budget.
- 79-1015.3. Disposal of unexpended appropriations.
- 79-1016. Inquiries and investigations by budget director.
- 79-1017. Other duties of director.
- 79-1018. Power of director to demand and receive information from state departments, officers, etc.
- 79-1020. Definitions.
- 79-1021. State-wide cost allocation plan.
- 79-1022. Indirect cost rates.

79-1001. (294) Chapter to be cited, how. This chapter shall be known and may be cited as the "Budget Act."

History: En. Sec. 1, Ch. 205, L. 1919;
re-en. Sec. 294, R. C. M. 1921; amd. Sec.
29, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "chapter" for "act" twice.

79-1006, 79-1007. [Transferred.]

Compiler's Notes

Sections 30 and 31, Ch. 326, Laws of
1974 renumbered these sections as secs.
79-1015.1 and 79-1015.2.

79-1011. [Transferred.]

Compiler's Notes

Section 32, Ch. 326, Laws of 1974 re-
numbered this section as sec. 79-1015.3.

79-1012. Governor chief budget officer—appointment of budget director.
The governor shall be the chief budget officer of the state and shall appoint a budget director, who shall hold office at the pleasure of the governor and perform the duties assigned by law or by the governor.

History: En. Sec. 1, Ch. 158, L. 1959;
amd. Sec. 1, Ch. 101, L. 1969; amd. Sec.
1, Ch. 42, L. 1974; amd. Sec. 1, Ch. 282,
L. 1974; amd. Sec. 8, Ch. 61, L. 1977.

Amendments

The 1969 amendment substituted the second sentence for the following provision: "and shall appoint a director of the budget, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out the provisions of this chapter."

Chapter 42, Laws of 1974, substituted "and shall appoint a budget director,

who shall hold office at the pleasure of the governor, and whose duty it shall be" for "the state controller shall be ex officio budget director and it shall be his duty"; and made a minor change in punctuation.

Chapter 282, Laws of 1974, made substantially the same changes.

The 1977 amendment substituted "perform the duties assigned by law or by the governor" for "whose duty it shall be to carry out the provisions of this chapter" at the end of the section; and made a minor change in punctuation.

79-1012.1. Definitions. As used in this chapter:

- (1) "effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained;
- (2) "program" means a combination of resources and activities designed to achieve an objective or objectives;

(3) "program size" means the magnitude of a program such as the size of clientele served, the volume of service in relation to the population or area, etc.;

(4) "program size indicator" means a measure to indicate the magnitude of a program;

(5) "priority listing" means a ranking of proposed expenditures in order of importance.

History: En. 79-1012.1 by Sec. 1, Ch. 460, L. 1975.

Title of Act

An act to provide for a program plan-

ning and budgeting system; to specify information to be contained in the proposed budget; providing for the submission of variance reports.

79-1012.2. Program planning and budgeting system. (1) The budget director shall implement a program planning and budgeting system as provided in this act for at least one program in representative agencies of state government service such as planning, human service delivery, licensing and regulation, and other programs as determined by the budget director.

History: En. 79-1012.2 by Sec. 2, Ch. 460, L. 1975.

79-1012.3. Program budget. The biennial budget under this act shall include a departmental analysis summarizing past and proposed spending plans by program and the means of financing the proposed plan. Information presented shall include the following:

(1) A statement of departmental and program objectives, effectiveness measures and program size indicators;

(2) At least three (3) alternative funding levels for each program with effectiveness measures and program size indicators detailed for each alternative funding level. The first funding level shall not exceed eighty per cent (80%) of that level authorized by the legislature for the present fiscal year;

(3) A departmental priority listing encompassing all alternative funding levels;

(4) A detailed narrative which shall include at least:

(a) A description of the kinds of activities carried out or unusual technologies employed;

(b) A statement of key policies pursued;

(c) A description of major external trends affecting the program;

(d) An evaluation of how effective the program has been in the past and the apparent reasons for the level of success attained;

(e) A description of possible events that could result in significant variations in the size, operation or effectiveness of the program;

(f) An explanation of the rationale used in determining the priority listing.

(5) Actual disbursements for the past two (2) fiscal years, the estimated disbursements for the fiscal year in progress, and the governor's

recommendations for the ensuing biennium by program and disbursement category;

(6) A statement containing further recommendations of the governor as appropriate.

History: En. 79-1012.3 by Sec. 3, Ch. 460, L. 1975.

79-1012.4. Long-range building program. The executive budget for all state agencies shall include detailed recommendations for the state long-range building program presented in a priority listing. Each recommendation shall be presented by department, institution, agency or branch by funding source, with a description of each proposed project, an explanation of the problem to be addressed by the proposed project, alternative methods of addressing the problem, the rationale for the selection of a particular alternative and a projection of increased operating costs incident to the project for the next three (3) bienniums.

History: En. 79-1015.1 by Sec. 4, Ch. 460, L. 1975.

79-1012.5. Variance reports. Annually by January 1 the governor shall submit to the members of the legislature a variance report for the immediate past fiscal year which shall detail variances between the expenditures, revenues, program size indicators, effectiveness measures and priorities expressed in the executive budget and those actually realized. The report should contain a detailed narrative explaining the reasons for all significant variances.

History: En. 79-1020 by Sec. 5, Ch. 460, L. 1975.

79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information. In the preparation of a state budget the budget director shall not later than the first day of July in the year preceding the convening of the legislative assembly, distribute to all state offices and departments, including the judicial branch, and the legislative branch, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the budget director to procure such information as the budget director shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, to include estimates of receipts, actual receipts, estimates of disbursements, and actual disbursements, and other information classified and grouped as requested by the budget director and covering such period or periods of time as specified by the budget director.

(a) Except as provided in this paragraph, it shall be the duty of each department, agency and office to submit information requested by the budget director on or before the fifteenth day of August in the even year preceding the convening of the legislative assembly. The Montana university system, the department of institutions, and the department of highways shall submit such information on or before the first day of September of such year.

(b) If any department, institution or agency shall fail to present such requested information within the time herein specified, the budget director

shall note that fact in the budget submitted to the governor, and the budget director shall prepare a budget request on behalf of such department, institution or agency, based upon his studies of the operations, plans and needs thereof. Legislative branch requests shall be included in the budget submitted by the governor without changes.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974.

Amendments

The 1969 amendment inserted "and the Montana state highway commission" after "each state custodial institution" in subdivision (a).

The 1974 amendment substituted "budget director" for "director of the budget" throughout the section; substituted "distribute to all state offices and departments, including the judicial branch, and the legislative branch" in the first sentence for "distribute to all state offices and institutions, including the judicial department"; substituted "estimates of

receipts, actual receipts, estimates of disbursements, and actual disbursements" in the second sentence for "estimates of revenues, actual revenues received, expenditures made"; inserted "and office" after "agency" in the first sentence of subdivision (a); substituted "fifteenth day of August in the even year preceding" in the first sentence of subdivision (a) for "first day of August in the year preceding"; substituted the last sentence of subdivision (a) for "Each unit of the university of Montana, each state custodial institution and the Montana state highway commission shall submit * * * of September of such year"; added the last sentence of subdivision (b); and made minor changes in punctuation.

79-1014. Preliminary budget—preparation—submission to governor and governor-elect. Upon receipt of the completed forms and other available data and information, the budget director shall examine the same for the purpose of determining the necessity of the disbursements and funds requested and shall, on or before the fifteenth day of December in the year preceding the convening of the legislature, submit to the governor and to the governor-elect, if one there be, in writing, a preliminary budget for the ensuing biennium containing the detailed information hereinafter required to be set forth in the budget to be submitted by the governor to the legislative assembly. If so requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, such estimates, comments and recommendations as the governor-elect may wish to make, and this section of the budget shall be transmitted to the legislative assembly without change, and it is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts.

History: En. Sec. 3, Ch. 158, L. 1959; amd. Sec. 3, Ch. 282, L. 1974.

Amendments

The 1974 amendment substituted "budget director" for "director of the budget" and "disbursements" for "expenditures" in the first sentence; deleted "by ap-

propriations" after "funds requested" in the first sentence; substituted "on or before the fifteenth day of December" for "on or before the first day of December" in the first sentence; deleted "part 2" before "of the budget submitted by the governor" in the first sentence; and added the second sentence.

79-1015. Submission of budget to legislature—form—contents. The governor shall, following the receipt of the preliminary budget from the budget director have prepared a budget for the ensuing biennium and shall submit said budget to each member of the legislative assembly at the time of the convening of the legislative assembly. The budget submitted shall set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan shall consist of the following:

(1) A financial plan of the state government for the ensuing biennium shall embrace a consolidated budget summary setting forth the aggregate figures of the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary shall be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund, and where applicable, organizational unit.

(2) An analysis of the actual and projected receipts, disbursements and solvency of each accounting entity within each fund for the current and subsequent biennium.

(3) A detailed analysis of receipts by accounting entity within fund indicating classification and source of funds.

(4) A departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented shall include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;

(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category; and

(d) a statement containing further recommendations of the governor should he deem it necessary.

(5) Detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency or branch by funding source, with a description of each proposed project. An appropriation measure shall be presented by project, source of funding, and department, agency, institution or branch for which the project is primarily intended.

(6) Appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974.

Amendments

The 1974 amendment substituted "budget director" for "director of the budget" in the first sentence; and rewrote subdivisions (1) through (6). For prior law, see parent volume.

79-1015.1. Legislative action. The presiding officers of the house of representatives and of the senate shall promptly refer the budgets and budget bills to the proper committees. The budget bill for the maintenance of the agencies of state government and the state institutions shall be based

upon the budget and proposed budget bill so submitted. The legislative assembly may amend the proposed budget bill, but it may not amend the proposed budget bill so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

History: En. Sec. 6, Ch. 205, L. 1919; re-en. Sec. 299, R. C. M. 1921; amd. Sec. 4, Ch. 167, L. 1933; Sec. 79-1006, R. C. M. 1947; amd. and redes. 79-1015.1 by Sec. 30, Ch. 326, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "agencies" in the second sentence for "departments"; deleted "by increasing or decreasing the items therein" in the last sentence after the first reference to "budget bill"; and made minor changes in punctuation and phraseology.

79-1015.2. Right of officers to appear on consideration of budget. The department of administration and representatives of the executive officers, agencies, and institutions of the state, and other state agencies expending or applying for state moneys, may, and when requested by either the house of representatives or the senate, shall appear and be heard with respect to any budget bill.

History: En. Sec. 7, Ch. 205, L. 1919; re-en. Sec. 300, R. C. M. 1921; Sec. 79-1007, R. C. M. 1947; amd. and redes. 79-1015.2 by Sec. 31, Ch. 326, L. 1974.

Amendments

The 1974 amendment renumbered this

section; substituted "department of administration" at the beginning for "state board of examiners"; substituted "the executive officers, agencies" for "the executive departments, boards, officers, commissions"; and made minor changes in phraseology.

79-1015.3. Disposal of unexpended appropriations. All moneys appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

History: En. Sec. 2, H. B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R. C. M. 1921; amd. Sec. 14, Ch. 147, L. 1963; Sec. 79-1011, R. C. M. 1947; amd. and redes. 79-1015.3 by Sec. 32, Ch. 326, L. 1974.

Amendments

The 1974 amendment renumbered this section; and made minor changes in punctuation and phraseology.

79-1016. Inquiries and investigations by budget director. The budget director or his designated representative shall make such further inquiries and investigations as he considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his travel expenses as provided for in 59-538, 59-539, and 59-801, as amended, in visiting any institution or department in the state. The budget director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter.

History: En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; amd. Sec. 18, Ch. 453, L. 1977.

Amendments

The 1974 amendment substituted "budget director" for "director of the budget"

in two places; and inserted "or his designated representative" before "shall make such further inquiries" in the first sentence.

The 1977 amendment substituted "travel expenses as provided for in 59-538, 59-

539, and 59-801, as amended" in the second sentence for "necessary expenses of travel and subsistence as provided by law"; and made minor changes in phraseology and punctuation.

79-1017. Other duties of director. The budget director in addition to the duties hereinbefore set forth shall perform such other duties as the governor as chief budget officer of the state may direct. He shall, as often as requested by the governor, prepare and furnish reports to the governor concerning appropriations made by the legislative assembly, the receipts and disbursements made by any department, office or institution of the state. The budget director shall be available to all standing committees of the house of representatives and the senate concerned with appropriations, revenue, finance and claims and shall furnish to such committees any information required while said committees are considering the budget.

History: En. Sec. 6, Ch. 158, L. 1959; amd. Sec. 6, Ch. 282, L. 1974.

in two places; and substituted "the receipts and disbursements" in the second sentence after "made by the legislative assembly" for "the receipts from sources other than appropriations, and expenditures."

Amendments

The 1974 amendment substituted "budget director" for "director of the budget"

79-1018. Power of director to demand and receive information from state departments, officers, etc. The budget director shall have power to demand and receive from every department, officer, board, commission, or institution, at any time, any and all information requested.

History: En. Sec. 7, Ch. 158, L. 1959; amd. Sec. 7, Ch. 282, L. 1974.

et director" for "director of the budget"; deleted "including the state controller" after "institution"; and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "budg-

79-1020. Definitions. As used in this act:

(1) "Grantee agency" means any agency of state government receiving federal funds;

(2) "Service agency" means state agencies which provide goods, facilities, and services to a grantee agency;

(3) "Indirect costs" means costs which benefit more than one agency or program and are not readily assignable to the agency or program specifically benefiting.

History: En. 79-1020 by Sec. 1, Ch. 223, L. 1975.

indirect costs of federal assistance programs; repealing sections 79-2409 through 79-2415, R. C. M. 1947, which refer to reimbursement of the general fund for costs of central services.

Title of Act

An act providing for the recovery of

79-1021. State-wide cost allocation plan. The budget director shall annually prepare a state-wide cost allocation plan distributing service agency indirect costs among the grantee agencies, in accordance with principles and procedures established by federal regulations and guidelines.

History: En. 79-1021 by Sec. 2, Ch. 223,
L. 1975.

79-1022. Indirect cost rates. Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

History: En. 79-1022 by Sec. 3, Ch. 223,
L. 1975.

Repealing Clause

Section 4 of Ch. 223, Laws 1975 read
"Sections 79-2409 through 79-2415, R. C. M.
1947, are repealed."

CHAPTER 11—PURCHASE OF STATE GENERAL FUND WARRANTS

Section

79-1101. Prior right to purchase general fund warrants reserved to state.

79-1105. Redemption of bonds before maturity.

79-1101. (1912) Prior right to purchase general fund warrants reserved to state. (1) The state of Montana hereby reserves to itself a preference right, prior to the right of any person, company, or corporation to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment which in its judgment it would be advantageous to have invested in state general fund warrants, and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amounts. The auditor shall attach to, or stamp, write, or print upon each general fund warrant thereafter issued, until warrants totaling the amounts so designated have been issued, a notice that the state will exercise its preference right to purchase the warrant. The state treasurer shall thereafter when the warrant is presented to him, pay it out of the proper fund as designated by the board and the warrant so purchased shall be registered as other state warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall thereupon issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer.

History: En. Sec. 89, Ch. 147, L. 1909; re-en. Sec. 1912, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1927; amd. Sec. 33, Ch. 326, L. 1974.

of investments" in subsections (1) and (2) for "state board of land commissioners" and in subsection (3) for "secretary of the state board of land commissioners"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "board

79-1102 to 79-1104. (1913 to 1915) Repealed.**Repeal**

Sections 79-1102 to 79-1104 (Secs. 1 to 3, Ch. 78, L. 1921; Secs. 34, 35, Ch. 326, L.

1974), relating to notice of bond sales, were repealed by Sec. 11, Ch. 61, Laws 1977.

79-1105. (1916) Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity. In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month shall be calculated and collected for a full month.

(2) Payment and redemption of bonds shall be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at his office would be disadvantageous to the redemptioner. When bonds have been so paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise, and mail to the proper treasurer together with his receipt.

(3) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated, nor to grant the right to pay any bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds.

History: En. Sec. 2, Ch. 33, L. 1907; Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909; re-en. Sec. 1916, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1925; amd. Sec. 1, Ch. 3, L. 1929; amd. Sec. 36, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "board of investments" in subsection (1) for references to "state board of land commissioners"; deleted from the end of subsection (3) "except as provided in section 75-3907"; and made minor changes in style, punctuation and phraseology.

CHAPTER 12—MONTANA TRUST AND LEGACY FUND— UNIFIED INVESTMENT PLAN

Section

79-1212. Payments from Montana trust and legacy fund.

79-1215. Records of treasurer—publicity to contributors given by legislature.

79-1201 to 79-1203. (5668.19 to 5668.21) Repealed.**Repeal**

Sections 79-1201 to 79-1203 (Secs. 1 to 3, Ch. 70, L. 1953; Secs. 7 to 9, Ch. 176, L. 1953; Sec. 1, Ch. 118, L. 1957; Sec. 1, Ch. 173, L. 1959; Sec. 1, Ch. 67, L. 1963; Secs. 16, 17, Ch. 147, L. 1963; Sec. 1, Ch. 256, L. 1963; Sec. 1, Ch. 78, L. 1967; Sec.

1, Ch. 185, L. 1967; Sec. 1, Ch. 188, L. 1971; Sec. 1, Ch. 205, L. 1971; Sec. 1, Ch. 269, L. 1971; Sec. 34, Ch. 100, L. 1973), relating to the unified investment plan for investment funds, were repealed by Sec. 9, Ch. 298, Laws 1973. For new law, see secs. 79-308 to 79-311.

79-1206 to 79-1209. (5668.24 to 5668.27) Repealed.**Repeal**

Sections 79-1206 to 79-1209 (Secs. 6 to 9, Ch. 70, L. 1929; Secs. 10 to 12, Ch. 176,

L. 1953; Secs. 18, 19, Ch. 147, L. 1963; Sec. 35, Ch. 100, L. 1973), relating to investment of the trust and legacy fund, the

supreme court, power of the board of land commissioners to transfer securities, and the treasurer's account of the invested

funds, were repealed by Sec. 9, Ch. 298, Laws 1973.

79-1211. (5668.29) Repealed.

Repeal

Section 79-1211 (Sec. 11, Ch. 70, L. 1929; Sec. 13, Ch. 176, L. 1953; Sec. 20, Ch. 147, L. 1963; Sec. 36, Ch. 100, L. 1973), relat-

ing to transfer of interest earned from trust and legacy fund pro rata to each subfund, was repealed by Sec. 9, Ch. 298, Laws 1973.

79-1212. (5668.30) Payments from Montana trust and legacy fund.

The principal, and any part thereof, of each and every subfund constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular subfund arises.

History: En. Sec. 12, Ch. 70, L. 1929; amd. Sec. 21, Ch. 147, L. 1963; amd. Sec. 37, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "constitutional and" before "statutory provisions applicable thereto."

79-1213, 79-1214. (5668.31, 5668.32) Repealed.

Repeal

Sections 79-1213, 79-1214 (Secs. 13, 14, Ch. 70, L. 1929; Secs. 14, 15, Ch. 176, L. 1953; Secs. 22, 23, Ch. 147, L. 1963), re-

lating to payments from funds administered under the unified investment plan, were repealed by Sec. 9, Ch. 298, Laws 1973.

79-1215. (5668.33) Records of treasurer—publicity to contributors given by legislature. The state treasurer shall keep in a book provided for that purpose, a permanent record of all gifts, donations, grants, legacies, bequests, devises and other contributions administered by the state board of investments under acts and parts of acts providing therefor or accepting the same on the part of the state of Montana. This record shall show the names of the givers, the purposes of the contributions and all essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislature shall from time to time make provisions for suitable publicity concerning these benefactors of their fellow men.

History: En. Sec. 15, Ch. 70, L. 1929; amd. Sec. 38, Ch. 100, L. 1973; amd. Sec. 10, Ch. 298, L. 1973.

Amendments

Chapter 100, Laws of 1973, substituted "the trust and legacy fund statutes" at the end of the first sentence for "article XXI of the constitution and acts and parts of acts carrying this part of the constitution into effect."

Chapter 298, Laws of 1973 substituted "state board of investments" for "state board of land commissioners" in the first sentence; substituted "acts and parts of acts providing therefor or accepting the same on the part of the state of Montana" at the end of the first sentence for "article XXI of the constitution and acts and parts

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 298. Neither amendatory act mentioned the other. They appear to conflict in the language used at the end of the first sentence. Since the only change made by Ch. 100 was in the conflicting language, and since Ch. 298 was later in time of approval, the compiler has used the language of Ch. 298 above.

of acts carrying this part of the constitution into effect"; and substituted "legislature" for "legislative assembly" in the final sentence.

79-1216. (5668.34) Repealed.

Repeal

Section 79-1216 (Sec. 16, Ch. 70, L. 1929; Sec. 16, Ch. 176, L. 1953), relating to re-

ports by the state treasurer, was repealed by Sec. 9, Ch. 298, Laws 1973.

CHAPTER 14—INVESTMENT INCOME OF STATE INSTITUTIONS

Section

79-1401. Deposits of moneys received from permanent grants of state educational institutions.

79-1401. (1922) Deposits of moneys received from permanent grants of state educational institutions. All moneys received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall be deposited with the state treasurer of Montana for each of such institutions, to the credit of the federal and private revenue fund.

History: En. Sec. 1, Ch. 120, L. 1909; re-en. Sec. 1922, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1961; amd. Sec. 24, Ch. 147, L. 1963; amd. Sec. 5, Ch. 286, L. 1977.

Amendments

The 1977 amendment deleted "at the close of each calendar month" after "institution shall."

CHAPTER 16—INDIAN WELFARE FUNDS—ADMINISTRATION

79-1602. (5668.15) Repealed.

Repeal

Section 79-1602 (Sec. 2, Ch. 65, L. 1927), relating to expenditure of federal funds

on behalf of Indians, was repealed by Sec. 1, Ch. 198, Laws 1973.

79-1603. (5668.16) Repealed.

Repeal

Section 79-1603 (Sec. 3, Ch. 65, L. 1927), relating to budgets for Indian welfare

funds, was repealed by Sec. 11, Ch. 61, Laws 1977.

CHAPTER 17—BONDS OF STATE AND TAXING UNITS—AMORTIZATION PREFERRED—FISCAL AGENCIES FOR PAYMENT

(Repealed—Section 11, Chapter 61, Laws of 1977)

79-1701 to 79-1713. (5668.1 to 5668.13) Repealed.

Repeal

Sections 79-1701 to 79-1713 (Secs. 1 to 5, Ch. 38, L. 1923; Secs. 1 to 8, Ch. 92, L.

1925), relating to bonds issued by state and taxing units, were repealed by Sec. 11, Ch. 61, Laws 1977.

CHAPTER 20—BOND VALIDATING ACT

Section

79-2001. Short title.
79-2002. Definitions.
79-2003. Validation.

79-2004. Period of application.

79-2005. Application.

79-2001. Short title. This chapter may be cited as the "Bond Validating Act".

History: En. 79-2001 by Sec. 1, Ch. 265, L. 1975; amd. Sec. 1, Ch. 564, L. 1977.

Compiler's Notes

Chapter 265 of Laws 1975 was substituted for Ch. 68, Laws 1974 and assigned section numbers identical with those of the 1974 law. Previous bond validating acts enacted since 1935 were: Ch. 6, Laws 1937; Ch. 164, Laws 1939; Ch. 45, Laws 1941; Ch. 117, Laws 1943; Ch. 196, Laws 1945; Ch. 81, Laws 1947; Ch. 2, Laws 1953; Ch. 5, Laws 1955; Ch. 4, Laws 1957; Ch. 16, Laws 1959; Ch. 19, Laws 1961; Ch. 100, Laws 1963; Ch. 75, Laws 1965; Ch. 96, Laws 1967; Ch. 43, Laws 1969; Ch. 208, Laws 1971; Ch. 145, Laws 1973.

Title of Act

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public bodies, to authorize and issue such bonds, instruments, and other obligations, however described, and providing that this act may be cited as "The 1975 Bond Validating Act"; and providing an effective date.

Amendments

The 1977 amendment substituted "chapter" for "act"; and substituted "the 'Bond Validating Act'" for "The 1975 Bond Validating Act."

79-2002. Definitions. The following terms, wherever used or referred to in this chapter, have the following meanings:

(1) The term "public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and also includes the board of public education, the board of regents of higher education, the state board of examiners, the board of natural resources and conservation, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund.

History: En. 79-2002 by Sec. 2, Ch. 265, L. 1975; amd. Sec. 1, Ch. 486, L. 1975; amd. Sec. 2, Ch. 564, L. 1977.

Amendments

The 1977 amendment substituted "chapter" near the beginning of the section for "act"; and made minor changes in phraseology, punctuation and style.

79-2003. Validation. All bonds issued by any public body of this state and all proceedings taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges, and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, prior to the date set by and subject to the conditions set forth in 79-2004, are validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to

sell, exchange, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution, or delivery, and bonds of such public bodies, under the authority of such proceedings, are binding, legal, valid, and enforceable obligations of such public body.

History: En. 79-2003 by Sec. 3, Ch. 265, L. 1975; amd. Sec. 3, Ch. 564, L. 1977.

Amendments

The 1977 amendment deleted "heretofore" before each "issued" and "taken" near the beginning of the section; inserted "prior to the date set by and subject to the conditions set forth in 79-2004"; sub-

stituted "under the authority of such proceedings are binding" near the end of the section for "whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding"; substituted "public body" at the end of the section for "political body"; and made minor changes in phraseology and punctuation.

79-2004. Period of application. (1) This chapter does not apply to or affect any action or appeal instituted on or before the date to which it has most recently been extended, in which the validity of any such proceeding or of any such bonds is at issue.

(2) This chapter applies to bonds issued and proceedings taken prior to January 1, 1977. The application of this chapter may be extended by act of the legislature to any date provided therein.

History: En. 79-2004 by Sec. 4, Ch. 265, L. 1975; amd. Sec. 2, Ch. 486, L. 1975; amd. Sec. 4, Ch. 564, L. 1977.

Compiler's Notes

Section 3 of Ch. 486, Laws 1975 read "There is a new section in chapter 265, 1975 Laws of Montana numbered 5 that reads as follows: 'Section 5. This act is effective on passage and approval of Senate Bill 406 [Ch. 486, Laws of 1975].'"

Amendments

The 1977 amendment inserted the subsection (1) designation; substituted "date to which it has most recently been extended" in subsection (1) for "effective date of this act"; added subsection (2); and made minor changes in phraseology.

Effective Date

Section 4 of Ch. 486, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 21, 1975.

79-2005. Application. The application of the Bond Validating Act, Title 79, chapter 20, R.C.M. 1947, as hereby amended, is extended to bonds issued and proceedings taken prior to the effective date of this act.

History: En. 79-2005 by Sec. 5, Ch. 564, L. 1977.

Title of Act

An act validating, ratifying, approving, and confirming bonds and other instruments or obligations issued by public bodies of this state, and all proceedings

taken by such public bodies to authorize and issue such bonds, instruments, and other obligations, however described; amending sections 79-2001, 79-2002, 79-2003, and 79-2004, R. C. M. 1947; providing that such sections may be cited as the "Bond Validating Act"; providing for the extension of the application of such act.

CHAPTER 22—LONG-RANGE BUILDING PROGRAM BONDS

Section

- 79-2201. Definitions and establishment of funds.
- 79-2202. Long-range building program bonds.
- 79-2203. Sinking fund account.
- 79-2204. Waiver of security provisions.
- 79-2205. Authorization of bonds.

79-2201. Definitions and establishment of funds. (1). * * * [Same as parent volume.]

(2) Long-range building program bonds mean and include all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this chapter.

(3). * * * [Same as parent volume.]

(4) Clearance fund account means a separate long-range building program subfund which is created within the bond and insurance clearance fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislative assembly.

(5) Board, department and treasurer mean the state board of examiners, department of administration and state treasurer, respectively.

History: En. Sec. 1, Ch. 276, L. 1965;
amd. Sec. 1, Ch. 510, L. 1973.

and substituted references to the department of administration for references to the state controller in subsections (4) and (5).

Amendments

The 1973 amendment deleted "as authorized in section 79-2202" after "bonds issued" in subsection (2); added "or to refund outstanding bonds, as authorized in this chapter" at the end of subsection (2);

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

79-2202. Long-range building program bonds. (1) When authorized by the vote of two-thirds (2/3) of the members of each house of the legislature, or of a majority of the electors voting thereon if so provided by law, and within the limits of such authorization and the further limitations in this section, the board may issue and sell bonds of the state of Montana in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. Bonds may be issued hereunder to provide funds for the payment or redemption of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds issued pursuant to Initiative No. 54, and the amendment thereof, chapter 270, Laws of 1963, and long-range building program bonds issued under this section. The full faith and credit and taxing powers of the state of Montana shall be pledged for the payment of all bonds issued pursuant to this chapter after January 1, 1973, with all interest thereon and premiums payable upon the redemption thereof.

(2) Each series of such bonds shall be issued by the board upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding thirty (30) years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state of Montana, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds, the amount, maturities and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year, on all such bonds then outstanding and on the series so to be issued, will not exceed fifty per centum (50%) of the average annual amount collected during the three (3) then next preceding fiscal years, from the special taxes pledged by law to the sinking fund account at the time of such issuance; except that this provision shall not constitute a covenant of the state for the security of the bonds issued pursuant to this chapter after January 1, 1973, and the state reserves the right to amend this subsection (3) in any manner after all bonds issued prior to that date, and the interest thereon, have been fully paid or the state's liability thereon has been otherwise fully discharged.

(4). *** [Same as parent volume.]

(5) All proceeds of bonds issued hereunder shall be deposited in the clearance fund account, except that any premiums and accrued interest received shall be deposited in the sinking fund account. For the purposes set forth in subdivision (1) hereof, the state treasurer acting by and with the approval of the state board of examiners may set aside such funds as may be necessary to assure the redemption, or payment at maturity, of all of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds and as may be necessary or required to fulfill the obligations of the state of Montana by virtue thereof. With such funds the state treasurer with the approval of the state board of examiners is hereby authorized to call said bonds for redemption in accordance with the provisions thereof, at any redemption date, to pay said bonds on the maturity dates thereof, to deposit securities in escrow for the purpose of assuring such payments at future dates, and to take such other steps as may be necessary to fulfill all of the obligations of the state of Montana existing under the provisions of said bonds and the laws and resolutions authorizing the same.

(6) The state board of examiners is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973.

Amendments

The 1967 amendment added what is now the second sentence of subsection (1); added the second and third sentences of subsection (5); and added subsection (6).

The 1969 amendment increased the maximum interest rate specified in subsection (2) from five per cent to five and one-half per cent per annum.

The 1971 amendment deleted from subsection (2) the clause limiting interest rates to five and one-half per cent per annum; and made a minor change in phraseology.

The 1973 amendment substituted "by the vote of two-thirds ($\frac{2}{3}$) of the members of each house of the legislature, or of a majority of the electors voting thereon if so provided by law" near the beginning of subsection (1) for "by the legislative assembly"; substituted the final sentence of subsection (1) for a second sentence providing that the bonds should never become a debt of the state; substituted a reference to the department of administration in subsection (2) for a reference to the controller; added the final part of subsection (3), beginning "except that this provision shall not constitute a covenant"; and made minor changes in phraseology and punctuation.

79-2203. Sinking fund account. (1) From and after the pledge and appropriation of any special tax to the sinking fund account, as provided and contemplated in this section, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the sinking fund account. No special taxes pledged to the sinking fund account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this chapter prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds. Subject to the foregoing provisions of this subsection (1), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the sinking fund account.

(2). * * * [Same as parent volume.]

(3) Money at any time received in the sinking fund account in excess of the principal, interest and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the sinking fund account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account, and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the sinking fund account to the general fund.

(4) The state reserves the power, by enactment of the legislative assembly or the people, to levy, impose and assess and to pledge and appropriate to the sinking fund account any tax specially designated therein, or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislative assembly or the people for the redemption and prepayment of any long-range building program bonds, or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds. Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in subsection (3) of section 79-2202, substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded. Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the sinking fund account, to provide funds for payment of principal or interest due on long-range building program bonds, when and if and to the extent that the sinking fund account is insufficient for this purpose.

(5) The state pledges and appropriates, and directs to be credited as received to the sinking fund account, eleven per centum (11%) of all money received from the collection of the income tax and the corporation

license tax referred to in section 84-1901, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section; provided that no more than eleven per centum (11%) of such tax collections shall be deemed to be pledged for the purpose of subsection (3) of section 79-2202. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(6) The state pledges and appropriates and directs to be credited to the sinking fund account fifteen per centum (15%) of all money received from the collection of the nine cents (9¢) excise tax on cigarettes which is levied, imposed and assessed by section 84-5606, subdivision (2). The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes which are levied, imposed and assessed by section 84-5606, subdivisions (3) and (4), as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated, or after the necessary funds have been set aside for such payment and redemption as provided in this chapter. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed and assessed by law for that purpose including the tax levied, imposed and assessed by section 84-6802, R. C. M. 1947. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the War Veterans' Compensation Bonds, the World War I Veterans' Compensation Bonds or the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subdivision (6).

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973.

Amendments

The 1967 amendment, in subsection (5), increased appropriations to the sinking fund from 5 per centum to 11 per centum; in subsection (6), deleted "After approval through initiative or referendum by a majority of the electors voting at an election prior to January 1, 1967," at the beginning of the subsection; deleted "upon such approval also" before "pledges"; substituted "said taxes have" for "any such tax has" before "heretofore"; added "or after the necessary funds * * * in this act" at the end of the first sentence, now the second sentence; and added the last three sentences.

The 1971 amendment inserted a new

first sentence in subsection (6); deleted "and other tobacco products" following "cigarettes" in the second sentence of subsection (6); added at the end of the third sentence of subsection (6) the clause referring to the tax imposed by section 84-6802; and made minor changes in phraseology.

The 1973 amendment deleted "irrevocably" before "pledged and appropriated" in the first sentence of subsection (1); deleted "so long as any such bonds or the interest thereon remains unpaid" from the end of the first sentence of subsection (1); added the second and third sentences to subsection (1); deleted "and not including ad valorem taxes on property" from the end of subsection (3); deleted "except an ad valorem tax on property" after "any tax specially designated therein" in the first sentence of subsection (4); deleted "provided that this power shall not be

construed to constitute a pledge of the general credit of the state of Montana" from the end of the first sentence of sub-

section (4); and made minor changes in phraseology and style.

DECISIONS UNDER FORMER LAW

Approval by Voters

Because portions of the proceeds of the income tax, corporation license tax and tobacco tax are pledged for the security of bonds issued under this chapter, the issuance of new bonds would create a liability within the meaning of section 2, article XIII of the 1889 constitution, and such bonds may not be issued without approval by a vote of the people. State ex rel. Ward v. Anderson, 158 M 279, 491 P 2d 868, distinguishing Cottingham v.

State Board of Examiners, 134 M 1, 328 P 2d 907.

A holding that bonds issued under this chapter must be approved by the people will not be given retroactive effect; bonds issued in good faith before November 23, 1971, but without approval by a vote of the electors pursuant to section 2 of article XIII of the 1889 constitution, are valid. State ex rel. Ward v. Anderson, 158 M 279, 491 P 2d 868.

79-2204. Waiver of security provisions. If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by their purchase and retention of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this chapter.

History: En. Sec. 4, Ch. 276, L. 1965; amd. Sec. 4, Ch. 510, L. 1973.

Amendments

The 1973 amendment substituted "retention" for "redemption"; and made a minor change in style.

79-2205. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding two million five hundred thousand dollars (\$2,500,000), over and above the amount of the long-range building program bonds outstanding January 1, 1973, upon the conditions and in the manner stated in this chapter. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in section 79-2202, subdivisions (1) and (5) and section 72-2203, subdivision (4).

History: En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967; amd. Sec. 2, Ch. 146, L. 1969; amd. Sec. 3, Ch. 222, L. 1971; amd. Sec. 5, Ch. 510, L. 1973.

Amendments

The 1967 amendment inserted "over and above the amount of the long-range building program bonds outstanding January 1, 1967," before "upon the conditions"; and added the last sentence.

The 1969 amendment substituted "eighteen million dollars (\$18,000,000)" for "thirteen million five hundred thousand dollars (\$13,500,000)" and substituted "previously authorized" for "outstanding January 1, 1967" before "upon the conditions" in the first sentence.

The 1971 amendment substituted "five million, five hundred thousand dollars (\$5,500,000) over and above the amount of

the long-range building program bonds outstanding January 1, 1971" in the first sentence for "eighteen million dollars (\$18,000,000), over and above the amount of the long-range building program bonds previously authorized."

The 1973 amendment changed the authorization in the first sentence from \$5,500,000 above the amount outstanding on January 1, 1971, to \$2,500,000 above the amount outstanding on January 1, 1973; and added to the end of the section the reference to subdivision (4), section 72-2203.

Effective Date

Section 3 of Ch. 146, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

DECISIONS UNDER FORMER LAW

Approval by Voters

Issuance of new bonds under this section created a liability within the meaning of section 2, article XIII of the former

constitution, and must be approved by a vote of the people before the bonds are issued. *State ex rel. Ward v. Anderson*, 158 M 279, 491 P 2d 868.

CHAPTER 23—LEGISLATIVE AUDIT ACT

Section

- 79-2301. Title and purpose of act.
- 79-2302. Definitions.
- 79-2303. [Transferred.]
- 79-2303.1. Legislative audit committee.
- 79-2304. Appointment and term of members—officers—vacancies.
- 79-2305. Meetings—compensation.
- 79-2306. [Transferred.]
- 79-2307. Appointment and qualifications of legislative auditor.
- 79-2308. Appointment of employees, consultants, and legal counsel.
- 79-2309. Term and removal of legislative auditor.
- 79-2310. Powers and duties of legislative auditor.
- 79-2311. Audit standards and objectives.
- 79-2311.1. Legislative auditor to assist legislative assembly during sessions.
- 79-2312. Recommendations of legislative auditor.
- 79-2314. Information from state agencies.
- 79-2315. Attorney general shall prosecute.

79-2301. Title and purpose of act. This act may be cited as “The Legislative Audit Act.” Because the legislative assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the legislative assembly should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the legislative assembly with factual information vital to the discharge of its legislative duties.

History: En. Sec. 1, Ch. 249, L. 1967.

Title of Act

“The Legislative Audit Act” creating a legislative audit committee and the office of legislative auditor and providing for the audit of state agencies by the

legislative auditor; amending sections 82-1002, 82-1005, 82-1007, 82-1009, 82-110, 71-206, 4-347, 4-230, and 5-910, R. C. M. 1947; repealing sections 82-1014, 82-1015, 82-1016, 84-4403, 84-4404, and 84-4405, R. C. M. 1947, and providing an effective date.

79-2302. Definitions. In this act

(1) “State agency” means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislative assembly, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

(2) “Committee” means the legislative audit committee.

History: En. Sec. 2, Ch. 249, L. 1967.

79-2303. [Transferred.]**Compiler's Notes**

Section 2, Ch. 367, Laws of 1974 re-numbered this section as sec. 79-2304.

79-2303.1. Legislative audit committee. (1) There is a legislative audit committee which is a permanent joint committee of the legislature.

(2) There is an office of the legislative auditor. The legislative auditor is responsible for performing the duties imposed by this act.

History: En. 79-2303.1 by Sec. 1, Ch. 367, L. 1974; amd. Sec. 25, Ch. 309, L. 1977.

Amendments

The 1977 amendment substituted "leg-

islature" at the end of subsection (1) for "legislative assembly"; substituted "legislative auditor" in the last sentence of subsection (2) for "director of this office"; and made minor changes in phraseology.

79-2304. Appointment and term of members—officers—vacancies.

(1) The legislative audit committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of each regular session in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house may be members of the same political party.

(2) A member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(3) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee.

History: En. Sec. 3, Ch. 249, L. 1967; Sec. 79-2303, R. C. M. 1947; amd. and redes. 79-2304 by Sec. 2, Ch. 367, L. 1974; amd. Sec. 26, Ch. 309, L. 1977.

Amendments

The 1974 amendment renumbered this section; inserted "of the first session of the biennium" after "before the sixtieth legislative day" in the first sentence; and rewrote the next-to-last sentence which read "Membership on the committee shall terminate with the termination of each member's term of office, or on December 31 of the year following the year in

which the appointment was made, whichever event first occurs."

The 1977 amendment divided the section into subsections; transferred the former second sentence to the end of the section and designated it subsection (4); substituted "each regular session" in the first sentence of subsection (1) for "the first session of the biennium"; deleted "or until the end of the sixtieth legislative day of the second session of the biennium following his appointment" after "ends" in subsection (2); substituted "legislature" in two places in subsection (4) for "legislative assembly"; and made minor changes in phraseology and style.

79-2305. Meetings—compensation. (1) The committee shall meet as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor.

(2) Committee members are entitled to receive compensation and expenses as provided in 43-310.1.

History: En. Sec. 4, Ch. 249, L. 1967; Sec. 79-2304, R. C. M. 1947; amd. and redes. 79-2305 by Sec. 3, Ch. 367, L. 1974; amd. Sec. 8, Ch. 103, L. 1977.

Amendments

The 1974 amendment renumbered this section; substituted "shall meet as often as may be necessary, during and between legislative sessions" in the first sentence for "shall meet once each quarter"; added "and paid compensation as provided by law for interim standing committees"

to the last sentence; and made a minor change in phraseology.

The 1977 amendment inserted the subsection designations; substituted subsection (2) for a sentence reading "Committee members shall be reimbursed from the appropriation to the office of the legislative auditor for their actual and necessary expenses incurred as a result of interim meetings, and paid compensation as provided by law for interim standing committees"; and made minor changes in punctuation.

79-2306. [Transferred.]

Compiler's Notes

Section 4, Ch. 367, Laws of 1974 renumbered this section as sec. 79-2308.

79-2307. Appointment and qualifications of legislative auditor. The committee shall appoint the legislative auditor and set his salary. The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least two (2) years experience in the field of governmental accounting and auditing.

History: En. Sec. 5, Ch. 249, L. 1967; Sec. 79-2305, R. C. M. 1947; redes. 79-2307 by Sec. 8, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section.

79-2308. Appointment of employees, consultants, and legal counsel. The legislative auditor may appoint whatever employees and consultants are necessary to carry out the provisions of this act, within the limitations of legislative appropriations. The legislative auditor may employ legal counsel to conduct proceedings under this act.

History: En. Sec. 6, Ch. 249, L. 1967; Sec. 79-2306, R. C. M. 1947; amd. and redes. 79-2308 by Sec. 4, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section; inserted "and consultants" after "employees" in the first sentence; and added the second sentence.

79-2309. Term and removal of legislative auditor. The legislative auditor is solely responsible to the legislative assembly. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The committee may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 7, Ch. 249, L. 1967; Sec. 79-2307, R. C. M. 1947; redes. 79-2309 by Sec. 8, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section.

79-2310. Powers and duties of legislative auditor. The legislative auditor shall:

- (1) audit the financial affairs and transactions of every state agency;
- (2) make a complete written report of each audit. A copy of each report shall be furnished to the department of administration, the state

agency which was audited, each member of the committee, and the legislative council.

(3) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information in his possession relative to the violation;

(4) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(5) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(6) report to the legislature during the first week of each regular session. The report shall contain, among other things, copies of or summaries of audit reports on state agencies and any recommendations relating to such reports.

(7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written consent of the grantee to the audit provided for in this subsection.

History: En. Sec. 8, Ch. 249, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; Sec. 79-2308, R. C. M. 1947; amd. and redes. 79-2310 by Sec. 5, Ch. 367, L. 1974; amd. Sec. 27, Ch. 309, L. 1977.

Amendments

Chapter 326, Laws of 1974 substituted "state department of administration" for "state controller" in subdivision (2).

Chapter 367, Laws of 1974 renumbered this section; inserted "and governor" after

"attorney general" in subdivision (3); added "in odd numbered years" to the first sentence in subdivision (6); and added subdivision (7).

The 1977 amendment deleted "in odd numbered years" at the end of the first sentence of subdivision (6); substituted "The report" at the beginning of the second sentence of subdivision (6) for "Each biennial report"; and made minor changes in phraseology, punctuation and style.

79-2311. Audit standards and objectives. The objectives of audits of state agencies conducted by the legislative auditor are to determine whether

(1) The agency is carrying out only those activities or programs authorized by the legislative assembly and is conducting them efficiently and effectively.

(2) Expenditures are made in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations.

(3) The agency collects and accounts properly for all revenues and receipts arising from its activities.

(4) The assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner.

(5) Reports and financial statements by the agency to the governor, the legislative assembly, and central control agencies disclose fully the

nature and scope of the activities conducted, and provide a proper basis for evaluating the agency's operations.

History: En. Sec. 9, Ch. 249, L. 1967;
Sec. 79-2309, R. C. M. 1947; redes. 79-
2311 by Sec. 8, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section.

79-2311.1. Legislative auditor to assist legislative assembly during sessions. During sessions of the legislative assembly, the legislative auditor and his staff, when requested, shall assist the legislative assembly, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

History: En. Sec. 11, Ch. 249, L. 1967;
Sec. 79-2311, R. C. M. 1947; redes. 79-
2311.1 by Legislative Council.

79-2312. Recommendations of legislative auditor. The reports of the legislative auditor may include comments, recommendations and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

History: En. Sec. 10, Ch. 249, L. 1967;
Sec. 79-2310, R. C. M. 1947; amd. and
redes. 79-2312 by Sec. 6, Ch. 367, L. 1974.

Amendments

The 1974 amendment renumbered this section.

79-2313. Repealed.

Repeal

Section 79-2313 (Sec. 13, Ch. 249, L. 1967; Sec. 1, Ch. 4, L. 1969), relating to

audit charges against earmarked money, was repealed by Sec. 2, Ch. 270, Laws 1971.

79-2314. Information from state agencies. (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any theft, actual or suspected, involving state moneys or property under his control or for which he is responsible.

History: En. Sec. 12, Ch. 249, L. 1967;
amd. Sec. 1, Ch. 270, L. 1971; Sec. 79-2312,
R. C. M. 1947; amd. and redes. 79-2314 by
Sec. 7, Ch. 367, L. 1974; amd. Sec. 62, Ch.
359, L. 1977.

Amendments

The 1971 amendment added the third sentence.

The 1974 amendment renumbered this section.

The 1977 amendment substituted "theft" in subsection (3) for "larceny, or embezzlement"; and made minor changes in phraseology and punctuation.

Title of Act

An act authorizing the attorney general to prosecute public offenses disclosed by audits of the legislative auditor; and to provide an effective date.

Repealing Clause

Section 2 of Ch. 270, Laws 1971 read "Section 79-2313, R. C. M., 1947, is hereby repealed."

79-2315. Attorney general shall prosecute. The attorney general shall conduct on behalf of the state, all prosecutions for public offenses disclosed by an audit of a state agency performed by the legislative auditor. If the attorney general shall decline such prosecution or shall fail to commence action on a public offense within a reasonable time the county attorney of the appropriate county shall conduct on behalf of the state such prosecution.

In any action taken by the attorney general or any county attorney under this section, wherein any professional person in the state of Montana is charged, or may have engaged in unethical conduct, all records, or certified copies of such records, including investigative materials, shall be turned over to the appropriate disciplinary authority of his or her profession immediately upon completion of the action.

History: En. Sec. 1, Ch. 4, L. 1974; amd. Sec. 1, Ch. 458, L. 1975.

Effective Date

Section 2 of Ch. 4, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved January 28, 1974.

Amendments

The 1975 amendment added the second paragraph.

Grand Jury Proceedings

Attorney general, who had completed his investigation of evidence presented by the state auditor, was entitled to have a grand jury empaneled, and command reluctant witnesses to appear and produce evidence for the purpose of inquiring into criminal

offenses. State ex rel. Woodahl v. District Court, — M —, 530 P 2d 780.

A district judge could inquire into the proceedings of a grand jury empanelled pursuant to an investigation under this section only to make certain its investigations stayed within the scope of the section's provisions. Matter of Secret Grand Jury Inquiry, — M —, 553 P 2d 987.

Retroactive Application

This section, being procedural, could be given retroactive effect notwithstanding the provisions of 12-201, and the attorney general could prosecute offenses disclosed by the legislative audit of the workmen's compensation division under this section even though the offenses occurred prior to its enactment. State v. Cline, — M —, 555 P 2d 725.

CHAPTER 24—REIMBURSEMENT OF GENERAL FUNDS FOR COSTS OF CENTRAL SERVICES

(Repealed—Section 103, Chapter 326, Laws of 1974; Section 4, Chapter 223, Laws of 1975)

79-2401 to 79-2408. Repealed.

Repeal

Sections 79-2401 to 79-2408 (Secs. 1 to 8, Ch. 11, L. 1969), relating to the state

board of review, were repealed by Sec. 103, Ch. 326, Laws of 1974.

79-2409 to 79-2415. Repealed.

Repeal

Sections 79-2409 to 79-2415 (Secs. 9 to 15, Ch. 11, L. 1969; Sec. 39, Ch. 100, L. 1973; Secs. 38 to 43, Ch. 326, L. 1974), re-

lating to reimbursement of general funds for costs of central services, were repealed by Sec. 4, Ch. 223, Laws of 1975.

CHAPTER 25—EMERGENCY AND DISASTER FUND

Section

- 79-2501. Governor may authorize expenditure in case of emergency or disaster.
- 79-2502. Maximum biennial expenditure.
- 79-2503. Implementation and administration.

79-2501. Governor may authorize expenditure in case of emergency or disaster. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods, energy emergencies or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

History: En. Sec. 1, Ch. 409, L. 1971; amd. Sec. 19, Ch. 577, L. 1977.

Title of Act

An act to provide an emergency and disaster fund for the governor to be implemented by the department of administration, authorizing the governor to expend not to exceed seven hundred fifty thousand dollars (\$750,000) per biennium from the general fund, and an immediate effective date.

Amendments

The 1977 amendment inserted "energy emergencies" near the middle of the section.

Energy Supply Alert and Energy Emergency Powers

Sections 1 to 18, Ch. 577, Laws 1977, provide for establishment of necessary energy supply alert and energy emergency

powers for the governor and for establishment of an energy policy committee, set forth conditions under which such powers are to be exercised, and provide penalties. Section 21 of the act provides for a period of effectiveness from May 13, 1977 until March 1, 1979.

Separability Clause

Section 20 of Ch. 577, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 21 of Ch. 577, Laws 1977 read "This act is effective on passage and approval and shall remain in effect until March 1, 1979." Approved May 13, 1977.

79-2502. Maximum biennial expenditure. Whenever an emergency or disaster is declared by the governor, he is authorized to expend from the general fund not to exceed seven hundred fifty thousand dollars (\$750,000), in any one (1) biennium.

History: En. Sec. 2, Ch. 409, L. 1971.

79-2503. Implementation and administration. The governor shall be charged with the implementation of the program, and the administration and development of rules and regulations for implementation of this act will be promulgated by the department of administration.

History: En. Sec. 3, Ch. 409, L. 1971.

Effective Date

Section 4 of Ch. 409, Laws 1971 read

"In order to preserve the public peace, health, welfare and safety, this act shall become effective upon its passage and approval." Approved March 18, 1971.

CHAPTER 26—INTEREST ON BONDS AND SPECIAL ASSESSMENTS OF
POLITICAL SUBDIVISIONS

Section

79-2601. Definitions.

79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions.

79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations.

79-2601. Definitions. The following terms as used in this act have the following meanings: (1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, special assessments, income or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state of Montana, but shall not include the state of Montana, the state board of examiners, the state water conservation board, the state highway commission or any other board, agency, or commission of the state of Montana.

(3) "Governing body" means the board, council, commission or other body charged with the general control of the issuance of bonds of a political subdivision.

History: En. Sec. 1, Ch. 234, L. 1971.

Title of Act

An act relating to the maximum rate of interest on bonds issued and special assessments levied and other evidence of indebtedness by political subdivisions and providing an effective date, and amending sections 11-2304, 11-2404, 16-2011, 75-7107,

75-7115, 75-7116, 75-7119, 75-7121, 11-2315, 16-2032, 11-982, 11-1307, 11-2218, 11-2214.2, 11-2226, 11-2227, 11-2231, 11-2249, 11-2277, 11-3717, 11-3910, 16-1620, 16-2002, 16-2046, 16-2604, 16-4517, 32-3121, 32-3123, 32-3502, 32-3805, 81-1003, 89-1701, 89-1705, 89-1801, 89-2348, 89-2501, 35-115, 47-124, 89-2502 and 89-3426, R. C. M. 1947.

79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions. Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed seven per cent (7%) except revenue bonds issued under the terms of sections 11-2401 through 11-2414, sections 11-2217 through 11-2221, and sections 11-4101 through 11-4110, R. C. M. 1947, which rate shall not exceed nine per cent (9%).

History: En. Sec. 2, Ch. 234, L. 1971.

Interest Rate on Special Assessment

A municipality or county acting in behalf of a legally formed special improvement district, under the provisions of Title

11, chapter 22, or Title 16, chapter 16, R. C. M. 1947, may issue and sell bonds or warrants bearing an interest rate in excess of 7% per annum. State ex rel. City of Townsend v. D. A. Davidson, Inc., — M —, 531 P 2d 370.

79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations. All special assessments levied by a political subdivision shall bear interest at such rate or rates as its governing

body shall determine, except that no such rate shall exceed the greater of seven per cent (7%) per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on said bonds.

History: En. Sec. 3, Ch. 234, L. 1971.

Interest Rate on Special Assessment

A municipality or county acting in behalf of a legally formed special improvement district, under the provisions of Title

11, chapter 22, or Title 16, chapter 16, R. C. M. 1947, may issue and sell bonds or warrants bearing an interest rate in excess of 7% per annum. State ex rel. City of Townsend v. D. A. Davidson, Inc., — M —, 531 P 2d 370.

CHAPTER 27—FEDERAL ASSISTANCE MANAGEMENT ACT

Section

- 79-2702. Purpose.
- 79-2703. Definitions.
- 79-2704. Federal assistance management—duties of budget director.
- 79-2705. Governor authorized to accept funds—designation of state agency.
- 79-2706. Applications for funds by state agencies—approval.
- 79-2707. Expenditure—approved budget amendment.
- 79-2708. Reports by participating state agencies.

79-2701. Repealed.

Repeal

Section 79-2701 (Sec. 1, Ch. 259, L. 1975), relating to the title of the act,

was repealed by Sec. 11, Ch. 61, Laws 1977.

79-2702. Purpose. The purpose of this act is to provide more complete information regarding federal assistance programs to the governor, state agencies, and the legislature, and co-ordinate federally assisted programs with other state programs.

History: En. 79-2702 by Sec. 2, Ch. 259, L. 1975.

Title of Act

An act relating to participation by the state in federal assistance programs; pre-

scribing the duties of the state budget director regarding these programs; providing procedures by which such programs may be accepted by the state; providing for reports on these programs; and repealing section 82-112, R. C. M. 1947.

79-2703. Definitions. As used in this act:

- (1) "State agency" means any agency of state government eligible to apply for and receive federal funds;
- (2) "Federal assistance programs" means any financial assistance made to a state agency by an agency of the United States government, whether a grant, loan, gift, contract, or in any other form;
- (3) "Application" means a written request to a federal agency for federal assistance program funds.

History: En. 79-2703 by Sec. 3, Ch. 259, L. 1975.

79-2704. Federal assistance management—duties of budget director. The budget director shall:

- (1) establish a central reporting and information service to keep the governor, state agencies, and the legislature informed about available

federal assistance programs, pending federal assistance legislation, and current federal assistance programs in effect within the state;

(2) make studies of the administration and effect of federal assistance programs in the state and advise the governor and the legislature of alternative recommended methods and procedures for the administration of these programs;

(3) assist in the co-ordination of federal assistance programs that involve or are administered by more than one (1) state agency;

(4) analyze and advise on applications for new federal assistance programs submitted to the governor for approval; and

(5) report, as requested by the legislature or its committees, on the status and condition of federal assistance programs in the state.

History: En. 79-2704 by Sec. 4, Ch. 259,
L. 1975.

79-2705. Governor authorized to accept funds—designation of state agency. The governor is authorized to accept on behalf of the state any federal assistance funds made available by act of Congress for programs that are consistent with the needs and goals of the state and its citizens and that are not prohibited by the provisions of this act or other applicable law. The governor shall designate, unless otherwise specified by state or federal law or regulation, the state agency to administer the accepted federal assistance program.

History: En. 79-2705 by Sec. 5, Ch. 259,
L. 1975.

79-2706. Applications for funds by state agencies—approval. All applications made by state agencies for federal assistance program funds, with the exception of university system research grants, must be approved by the governor prior to their submission to the federal authorities. The form and procedure for submission for the governor's approval shall be determined by the budget director. Applications by constitutionally elected officials shall be subject only to review and comment by the governor.

History: En. 79-2706 by Sec. 6, Ch. 259,
L. 1975.

79-2707. Expenditure—approved budget amendment. Approval of a state agency application under 79-2706 shall not constitute authority to expend any federal assistance program funds subsequently granted. Financing for new or expanded programs from federal assistance program sources may be made available only by approved budget amendment.

History: En. 79-2707 by Sec. 7, Ch. 259,
L. 1975; amd. Sec. 9, Ch. 61, L. 1977.

Amendments

The 1977 amendment deleted "as provided in appropriation acts" from the end of the section; and made a minor change in style.

79-2708. Reports by participating state agencies. Any state agency that participates in any federal assistance program shall make such reports regarding it as the budget director may require.

History: En. 79-2708 by Sec. 8, Ch. 259,
L. 1975.

Repealing Clause

Section 9 of Ch. 259, Laws 1975 read
"Section 82-112, R. C. M. 1947, is re-
pealed."

TITLE 80—STATE INSTITUTIONS

Chapter

1. Montana state school for the deaf and blind, 80-102, 80-105, 80-107.
5. Montana state fair, Repealed—Section 173, Chapter 218, Laws of 1974.
14. State department of institutions, 80-1401 to 80-1403.1, 80-1405, 80-1406, 80-1407.1, 80-1410 to 80-1414.1, 80-1415 to 80-1419.
15. Institutional industries, 80-1501, 80-1503.
16. Payments for the care of residents of institutions, 80-1601 to 80-1607.
17. Galen state hospital, 80-1701 to 80-1705.
18. Montana veterans' home, 80-1801, 18-1803.
19. State prison, 80-1903, 80-1905, 80-1906, 80-1909 to 80-1912.
21. Montana children's center, 80-2105, 80-2106.
22. Juvenile facilities, 80-2202 to 80-2206, 80-2209 to 80-2213.
23. Boulder river school and hospital, 80-2310.
24. Warm Springs state hospital and mental health centers, 80-2401, 80-2402, 80-2412 to 80-2414.
25. Montana center for the aged, 80-2501, 80-2502.
26. Mental retardation—developmental disabilities, 80-2604.
27. Alcohol and drug dependence, 80-2701 to 80-2703, 80-2708 to 80-2725.
28. Community mental health centers, 80-2801 to 80-2806.

CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section

- 80-102. Montana state school for deaf and blind independent institution—rights saved.
80-105. Eligibility of children for admittance.
80-107. Duration of attendance at school.

80-102. Montana state school for deaf and blind independent institution—rights saved. The school for the deaf and blind, formerly located at Boulder in connection with the Montana state training school but transferred before July 1, 1943, to the city of Great Falls, shall be known and designated as the Montana state school for the deaf and blind and shall be conducted as a separate and independent unit and institution of the state of Montana under the general supervision, direction, and control of the state board of public education, with a local executive board to be appointed in the manner and to have the powers, authority, and duties granted to and required of that board by the provisions of 75-8510 and 75-8511. However, the transfer of that school or any change in the name thereof or in the objects or purposes thereof may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school prior to July 1, 1943.

History: En. Sec. 1, Ch. 182, L. 1943; amd. Sec. 39, Ch. 266, L. 1977.

Amendments

The 1977 amendment substituted "transferred before July 1, 1943" near the beginning of the first sentence for "heretofore transferred"; substituted "state board of public education" for "state board of education" near the end of the first sentence; substituted "75-8510 and 75-8511"

for "75-302 to 75-309" at the end of the first sentence; added "prior to July 1, 1943" at the end of the second sentence; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 40 of Ch. 266, Laws 1977 read "Sections 80-110 and 80-112, R. C. M. 1947, are repealed."

80-105. Eligibility of children for admittance. On proper application being made therefor, deaf and blind children who are not more than eighteen (18) years of age residing within the state of Montana, and nonresident children, who are not more than eighteen (18) years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality, or incapacitated for useful instruction by reason of physical disability, may be admitted to such school.

History: En. Sec. 4, Ch. 182, L. 1943;
amd. Sec. 1, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "who have

reached the age of five (5) and" after "blind children"; and substituted "who are not more than eighteen (18) years of age" for "between such ages" after "non-resident children."

80-107. Duration of attendance at school. Every child admitted to such school shall be entitled to attend such school until reaching the age of twenty-one (21) years unless the board of education and superintendent determine that attendance at the school will not benefit the child; provided, that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of education and superintendent.

History: En. Sec. 6, Ch. 182, L. 1943;
amd. Sec. 2, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "for a period of ten (10) years, or" after "such school" and substituted "unless the board of education and superintendent determine that attendance at the school will not benefit the child" after "twenty-one (21) years" for "if such age be reached before the expiration of such ten (10) year period. Any child who has attended the school for a period of ten (10) years, but has not yet reached the age of twenty-

one (21) years, with the consent and approval of the superintendent of the school, may petition the state board of education to remain in such school for an additional period of two (2) years, or until arriving at the age of twenty-one (21) years if such child will arrive at such age before the expiration of such additional two (2) year period. The board shall consider the petition upon the scholastic record and the record as to obedience and morality of such child while in such school and if it finds it proper to do so may grant the same."

80-110. Repealed.

Repeal

Section 80-110 (Sec. 8, Ch. 182, L. 1943), relating to data relating to deaf

and blind children, was repealed by Sec. 40, Ch. 266, Laws 1977.

80-112. Repealed.

Repeal

Section 80-112 (Sec. 10, Ch. 182, L. 1943), relating to exemption from jury

duty and road work for blind and deaf school employees, was repealed by Sec. 40, Ch. 266, Laws 1977.

CHAPTER 5—MONTANA STATE FAIR

(Repealed—Section 173, Chapter 218, Laws of 1974)

80-501 to 80-505. (1580, 1581, 3640, 3643, 3644) Repealed.

Repeal

Sections 80-501 to 80-505 (Secs. 1, 2, Ch. 47, L. 1911; Secs. 61, 64, 65, Ch. 216, L. 1921; Secs. 1, 2, Ch. 7, L. 1943;

Sec. 1, Ch. 142, L. 1947), relating to the Montana state fair, were repealed by Sec. 173, Ch. 218, Laws of 1974.

CHAPTER 14—STATE DEPARTMENT OF INSTITUTIONS

Section

- 80-1401. Purpose of department.
- 80-1402. Definition of terms.
- 80-1403. Institutions in department.
- 80-1403.1. Report to arson bureau.
- 80-1405. Powers and duties of department.
- 80-1406. Warden and superintendents of institutions.
- 80-1407.1. Powers and duties of board—hearings.
- 80-1410. Establishment of juvenile correctional facilities.
- 80-1411. Control and management of juvenile correctional centers—rules—special programs.
- 80-1412. Youth forest camp—work program.
- 80-1413. Participation by institutions in research programs.
- 80-1414. Aftercare agreement to be signed by youth before release from juvenile facility to custody of department—agreement to contain notice of youth's right to hearing on violation of agreement.
- 80-1414.1. Hearing on alleged violation of aftercare agreement—appeal to the district court.
- 80-1415. Control over minor so released vested in department.
- 80-1416. Detention of youth who violates aftercare agreement—delivery on request to department.
- 80-1417. Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty.
- 80-1418. Distribution of alcoholic beverages and drugs to patients at state custodial institutions a misdemeanor—penalty.
- 80-1419. Department of institutions may contract with governing body of Indian reservation for services.

80-1401. Purpose of department. The department of institutions shall utilize at maximum efficiency the resources of state government in a co-ordinated effort to restore the physically or mentally disabled, to rehabilitate the violators of law, to sustain the vigor and dignity of the aged, to provide for children in need of temporary protection or correctional counseling, to train children of limited mental capacity to their best potential, to rededicate the resources of the state to the productive independence of its now dependent citizens, and to co-ordinate and apply the principles of modern institutional administration to the institutions of the state.

History: En. Sec. 1, Ch. 199, L. 1965;
amd. Sec. 38, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "The

department of institutions shall utilize" in the first sentence for "The purpose of the legislative assembly in creating a state department of institutions is to utilize."

80-1402. Definition of terms. Unless the context requires otherwise, in Title 80:

- (1) "Department" means the department of institutions provided for in Title 82A, chapter 8.
- (2) "Director" means the director of institutions provided for in section 82A-801.
- (3) "Board" means the board of institutions provided for in section 82A-806.
- (4) "Institution" means any of the institutions listed in section 80-1403.

History: En. Sec. 2, Ch. 199, L. 1965;
amd. Sec. 39, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "Title 80" for "act" in the first sentence; de-

leted "state" before "department" and "board" throughout the section; inserted "provided for in Title 82A, chapter 8" in subdivision (1); inserted "provided for in

section 82A-801" in subdivision (2); inserted "provided for in section 82A-806" in subdivision (3); and made minor changes in phraseology.

80-1403. Institutions in department. (1) The following institutions are in the department:

- (a) Galen state hospital
- (b) Montana veterans' home
- (c) State prison
- (d) Montana children's center
- (e) Mountain View school
- (f) Pine Hills school
- (g) Boulder river school and hospital
- (h) Warm Springs state hospital
- (i) Montana center for the aged
- (j) Swan river youth forest camp
- (k) Eastmont training center

(1) Any other institution which provides care and services for juvenile delinquents including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislative assembly.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969; amd. Sec. 40, Ch. 120, L. 1974.

Amendments

The 1967 amendment changed the names of the institutions listed in subdivisions (a) and (e) through (h), and added subdivisions (j) and (l).

The 1969 amendment inserted what is now subdivision (k).

The 1974 amendment substituted "department" for "state department of

institutions" in the first sentence; substituted "Any other institution which provides" in subdivision (1) for "Such other institutions or departments established or to be established in the future having the function or purpose of providing" and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 280, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

80-1403.1. Report to arson bureau. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson, or of a person acquitted of arson on the ground of mental disease or defect, shall give written notification to the arson bureau of the department of justice whenever such a person is admitted or released by it:

- (a) Warm Springs state hospital;
- (b) state prison;
- (c) Mountain View school;
- (d) Pine Hills school;
- (e) Swan River youth forest camp;
- (f) any county or city detention facility.

(2) The notification shall disclose:

- (a) the name of the person;
- (b) where the person is or will be located; and
- (c) the type of fire the person was involved in.

History: En. 80-1403.1 by Sec. 1, Ch. 206, L. 1977.

Title of Act

An act to require notification to the

arson bureau whenever a person convicted of arson or acquitted of arson on the ground of mental disease or defect is admitted or released by a penal or mental facility.

80-1404. Repealed.

Repeal

Section 80-1404 (Sec. 4, Ch. 199, L. 1965; Sec. 2, Ch. 320, L. 1967), relating

to appointment of a director of the department of institutions, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-1405. Powers and duties of department. The department shall:

(1) adopt rules for the admission, custody, transfer, and release of residents of institutions except as otherwise provided by law; however, no such rules may amend or alter the statutory powers and duties of the state board of pardons;

(2) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(4) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(5) encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability.

History: En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967; amd. Sec. 33, Ch. 93, L. 1969; amd. Sec. 41, Ch. 120, L. 1974; amd. Sec. 43, Ch. 37, L. 1977.

Amendments

The 1967 amendment added a subdivision relating to appointment and compensation of wardens and superintendents (deleted by the 1974 amendment).

The 1969 amendment substituted a subdivision relating to reports as provided under section 82-4002 (deleted by the 1974 amendment) for a provision requiring annual reports to the governor and biennial reports to the legislature.

The 1974 amendment substituted "department" for "board" in the first sentence; deleted former subdivision (1) relating to adoption of general rules and regulations; deleted former subdivision (2) which read "Report as provided in section 2 [82-4002] of this act"; deleted

former subdivision (3) relating to review of budget requests; redesignated the remaining subdivisions accordingly; substituted "Subject to the functions of the department of administration" in present subdivision (2) for "Subject to the provisions of 'The Department of Administration Act'"; deleted a final subdivision relating to appointment and compensation of wardens and superintendents; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "Montana university system" for "university of Montana" in subsection (3); substituted "its functions under this title" for "the purposes of this act" at the end of subsection (3); and made minor changes in phraseology, punctuation and style.

Transition Schedule—Institutions Rules

Section 29, Ch. 285, Laws 1977 read "Rules and policies of the department of

institutions relating to patients or inmates in a mental, medical, or eleemosynary institution are subject to 82-4204(3) on and after October 1, 1977. Any such rules in effect on January 1, 1977, may

be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1)."

80-1406. Warden and superintendents of institutions. The warden or superintendents of institutions in the department are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department.

History: En. Sec. 6, Ch. 199, L. 1965; amd. Sec. 42, Ch. 120, L. 1974.

discretion. Petition of Spurlock, 151 M 380, 443 P 2d 5.

Amendments

The 1974 amendment deleted a former second sentence providing that wardens and superintendents may appoint assistants and employees subject to approval by the director and board; deleted a former third sentence relating to appointment of local advisory committees; and deleted a former fourth sentence relating to the council of superintendents (see parent volume).

Discretionary Authority of Warden of State Prison

Actions of warden of state prison in denying inmate access to money deposited in his spending account would not be interfered with in light of wide discretionary powers granted warden and in absence of clear showing that warden abused

Sovereign Immunity

State prison which participated in forest fire-fighting effort by lending a bulldozer, a guard and two prisoners to operate the bulldozer, all of whom were under the direction of the United States forest service during the fighting of the fire, was immune under doctrine of sovereign immunity from suit for injuries to person who, several days after fire had been extinguished, was injured when wind caused an uprooted tree which had been leaning against another tree to fall on him; since prison was attempting to protect its own land adjacent to the fire area, it was engaged in a governmental rather than a proprietary function. *Kish v. Montana State Prison*, — M —, 505 P 2d 891.

80-1407. Repealed.

Repeal

Section 80-1407 (Sec. 7, Ch. 199, L. 1965), relating to the appointment and

qualifications of members of the board of institutions, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-1407.1. Powers and duties of board—hearings. (1) The board of institutions shall:

(a) Act in an advisory capacity to the department. "Advisory capacity," as used in this subsection, means the board may furnish advice, gather information, make recommendations, and does not mean administering a program or function or setting policy.

(b) Hear grievances of residents of institutions within the department or employees of the department, as provided for in this subsection. A resident of an institution within the department or an employee of the department who has a grievance, and has exhausted all other administrative remedies within the department, is entitled to a hearing before the board for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action. A grievance of a resident means any serious matter affecting his care or treatment.

(2) No actions by the board may infringe upon the statutory functions of the board of pardons.

History: En. 80-1407.1 by Sec. 43, Ch. 120, L. 1974.

80-1408, 80-1409. Repealed.

Repeal

Sections 80-1408 and 80-1409 (Secs. 8, 9, Ch. 199, L. 1965), relating to the of-

ficers, payment of expenses, and functions of the board of institutions, were repealed by Sec. 96, Ch. 120, Laws of 1974.

80-1410. Establishment of juvenile correctional facilities. The department, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school, the Pine Hills school, and the youth forest camp.

History: En. Sec. 8, Ch. 320, L. 1967; amd. Sec. 44, Ch. 120, L. 1974; amd. Sec. 44, Ch. 37, L. 1977.

Title of Act

An act relating to the powers and duties of the board of institutions and to certain institutions under its management and control; providing the board's power to fix salaries of superintendents of institutions with the approval of the board of examiners if the salaries of superintendents or wardens are not specified by the legislative assembly in the appropriation to the department of institutions; changing the name of certain institutions; generally revising and amending the laws relating to juvenile correctional institutions; providing for the control and management of juvenile correctional facilities including juvenile correctional facilities hereafter authorized by the legislature;

providing for transferring of prisoners sent to the state prison who are under the age of twenty-one (21) to juvenile correctional facilities; amending sections 80-1403, 80-1404, 80-1405, 80-1601, 80-1701, 80-1702, 80-1703, 80-2202, 80-2203, 80-2204, 80-2205, 80-2206, 80-2209, 80-2210, 80-2211, 80-2212, 80-2301, 80-2302, 80-2303, 80-2304, 80-2305, 80-2306, 80-2307, 80-2308, 80-2309, 80-2401, 80-2402, 80-2404, repealing 80-2201, 80-2208, R. C. M. 1947.

Amendments

The 1974 amendment substituted "department" for "state department of institutions" in the first sentence; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "biennial" for "biannual" in the first sentence; and made minor changes in style.

80-1411. Control and management of juvenile correctional centers—rules—special programs. The facilities provided for in section 80-1410 shall exercise their functions under the supervision, and general management of the department. Except where otherwise provided by law, the department by rules shall establish standards of care, policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.

History: En. Sec. 9, Ch. 320, L. 1967; amd. Sec. 45, Ch. 120, L. 1974.

Amendments

The 1974 amendment deleted "and from time to time it shall order such changes

in the policies, conduct or management of the facilities as seems desirable" after "aftercare supervision" in the second sentence; and made minor changes in phraseology and punctuation.

80-1412. Youth forest camp—work program. In the case of a youth forest camp, a work program shall be provided by the department of natural resources and conservation, and shall be carried out with co-operation between that department and the camp superintendent.

History: En. Sec. 10, Ch. 320, L. 1967; amd. Sec. 46, Ch. 120, L. 1974. department of natural resources and conservation" for "Montana state forester"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "de-

80-1413. Participation by institutions in research programs. The department may direct a penal and corrective institution of the state to participate in and cooperate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof and may not become a part of the regular budgeted operation of the institution.

History: En. Sec. 1, Ch. 98, L. 1967; amd. Sec. 47, Ch. 120, L. 1974; amd. Sec. 45, Ch. 37, L. 1977.

Title of Act

An act authorizing voluntary participation in programs of research and development in the fields of science, health, education and natural resources by the governing boards of state penal, corrective or custodial institutions, and by the inmates thereof for use in welfare and rehabilitation work within said institutions.

Amendments

The 1974 amendment substituted "The

department may direct a penal, corrective, or custodial institution of the state to participate" in the first sentence for "The duly constituted and governing board of any penal, corrective, or custodial institution of the state of Montana is hereby enabled and authorized to participate"; and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "penal and corrective institution" for "penal, corrective, or custodial institution" near the beginning of the first sentence; and made minor changes in phraseology and punctuation.

80-1414. Aftercare agreement to be signed by youth before release from juvenile facility to custody of department—agreement to contain notice of youth's right to hearing on violation of agreement. A youth released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:

(1) A statement of the terms and conditions of his release, including a list of the acts, which, if committed by the youth, may result in his return to the facility; and

(2) A statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in section 80-1414.1, R. C. M. 1947, before he may be returned to the facility. The youth, upon advice of an attorney, may waive his right to a hearing.

History: En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974; amd. Sec. 1, Ch. 429, L. 1975.

Amendments

The 1974 amendment substituted "department" for "department of institutions" and for "aftercare division of the department of institutions"; and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "youth" for "child" at the beginning of the section; added subdivisions (1) and (2); and made minor changes in phraseology.

Title of Act

An act providing for the apprehension and detention of a child released from the custody of one of the state juvenile facilities to the supervision, custody and control of the aftercare division of the department of institutions, who has violated the terms of his or her aftercare agreement.

80-1414.1. Hearing on alleged violation of aftercare agreement—appeal to the district court. (1) When an allegation of a violation of the terms and conditions of a youth's aftercare agreement is made by the department, the youth shall be granted a hearing at or near the site of the alleged violation within 10 days after the day that the allegation was made to determine:

(a) Whether the youth committed the violation; and

(b) Whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released.

(2) With regard to this hearing, the youth shall be given:

(a) Written notice of the alleged violation of his aftercare agreement, including notice that the purpose of the hearing is to determine whether he has committed the violation, and, if so, whether or not the violation is of such a nature that he should be returned to the juvenile facility from which he was released;

(b) Disclosure of the evidence against him and the facts constituting the alleged violation;

(c) Opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him, and to show that there are compelling reasons which justify or mitigate the violation. Either party shall have the power to issue subpoenas to witnesses;

(d) The right to confront and cross-examine adverse witnesses;

(e) The right to be represented by an attorney; and

(f) A record of the hearing which may be taken by tape recorder and transcribed on appeal.

(3) The department shall appoint a referee who shall not be an employee of the department to conduct the hearing. The department shall adopt rules and regulations necessary to effect a prompt and full review.

(4) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the alleged violation, and that there are no compelling reasons which justified or mitigated the violation, the department may return the youth to the juvenile facility from which he was released. The referee shall give a written decision to the youth listing the reasons for his decision.

(5) Either the department or the youth may appeal from the decision at the hearing to the district court of the county in which the alleged violation occurred, by serving and filing a notice of appeal with the court within 10 days of the decision. The district court, upon receipt of a notice

of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal, based upon the record on appeal. The decision of the department shall not be altered except for abuse of discretion or manifest injustice.

(6) Pending the hearing on a violation, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others; or he may abscond or be removed from the community in which the alleged violation occurred. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in sections 10-1211, and 10-1214, R.C.M. 1947, except that detention pending a hearing on alleged violation may not be for longer than 72 hours unless the hearing time is extended, not to exceed 5 additional days, by the youth court upon stipulation of the youth or the youth's counsel and the state.

History: En. 80-1414.1 by Sec. 2, Ch. 429, L. 1975; amd. Sec. 1, Ch. 231, L. 1977.

Title of Act

An act to provide for a hearing on an alleged violation of youth's aftercare agreement, amending sections 80-1414 and 80-1416, R. C. M. 1947.

Amendments

The 1977 amendment deleted "or by any person" in subsection (1) after "by

the department"; added "and the facts constituting the alleged violation" to the end of subdivision (2)(b); substituted "department" for "board" in the second and third sentences of subsection (5); added "unless the hearing time is extended, not to exceed 5 additional days, by the youth court upon stipulation of the youth or the youth's counsel and the state" to the end of subsection (6); and made minor changes in style.

80-1415. Control over minor so released vested in department. The department has control over a child released under section 80-1414 until he attains the age of twenty-one (21) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by the child while under the control of the department.

History: En. Sec. 2, Ch. 158, L. 1969; amd. Sec. 29, Ch. 94, L. 1973; amd. Sec. 49, Ch. 120, L. 1974; amd. Sec. 1, Ch. 15, L. 1975.

Amendments

The 1973 amendment reduced the specified age from twenty-one to eighteen years.

The 1974 amendment substituted "department" for "department of institutions"; and made minor changes in phraseology and punctuation.

The 1975 amendment increased the specified age from eighteen to twenty-one years.

Effective Date

Section 2 of Ch. 15, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved February 21, 1975.

80-1416. Detention of youth who violates aftercare agreement—delivery on request to department. A youth who violates the terms and conditions of his aftercare agreement may be detained, by the department or by a law officer of the state, county, or city of the state, upon certificates in writing to the officer by the department to the effect that the youth has violated the terms and conditions of his aftercare agreement.

History: En. Sec. 3, Ch. 158, L. 1969; amd. Sec. 50, Ch. 120, L. 1974; amd. Sec. 3, Ch. 429, L. 1975.

Amendments

The 1974 amendment substituted "may be detained, by the department" near the

beginning of the section for "may be detained, day or night, by the department of institutions"; substituted "department" for "director of the aftercare division of the department of institutions" near the middle of the main paragraph; substituted "department" for "aftercare division of the department of institutions" at the end of the main paragraph and for "aftercare division" in subdivision (2); and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "youth" for "child" throughout the section;

and deleted at the end of the section "Upon detention by the law officer the child shall, on request, be delivered to the custody of the department, and the department may: (1) Return the child to one of the juvenile facilities of the state; or (2) Continue the child under the supervision of the department."

Effective Date

Section 4 of Ch. 158, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

80-1417. Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty. A person other than a parent or one having legal custody of the person of the patient or inmate who permits or assists a resident patient or inmate of a state custodial institution to leave the institution without permission from the properly authorized member of the staff or proper court order, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 361, L. 1971.

patients from state custodial institutions without permission of the staff.

Title of Act

An act to prohibit the removal of

80-1418. Distribution of alcoholic beverages and drugs to patients at state custodial institutions a misdemeanor—penalty. A person who knowingly sells or distributes, or attempts to sell or distribute, alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution without permission of the medical staff, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars (\$500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 362, L. 1971.

tion of alcoholic beverages and drugs to patients at state custodial institutions.

Title of Act

An act to prohibit the sale or distribu-

80-1419. Department of institutions may contract with governing body of Indian reservation for services. The department of institutions may contract with the governing body of an Indian reservation within the state for residential and educational services:

(1) at Mountain View school, Pine Hills school, aftercare division, or other juvenile facility maintained by the department, for children who

have been adjudicated delinquent by the tribal court; subject to the provisions of Title 80, chapter 14 and chapter 22; or

(2) at the Montana children's center for children who have been found by the tribal court to be dependent and neglected, subject to the provisions of Title 80, chapter 21.

History: En. 80-1419 by Sec. 1, Ch. 118, L. 1975.

stitutions to contract with the governing body of an Indian reservation for residential and educational services.

Title of Act

An act to permit the department of in-

CHAPTER 15—INSTITUTIONAL INDUSTRIES

Section

- 80-1501. Industrial activities permitted at institutions—powers of department— incentive pay to inmates.
80-1503. Public sale of goods prohibited—exchange for products of other states—labor contracts.

80-1501. Industrial activities permitted at institutions—powers of department— incentive pay to inmates. The department of institutions may:

(1) Establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions;

(2) Print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(3) Fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality;

(4) Require institutions to purchase needed goods from other institutions;

(5) Provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(6) Provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(7) Provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(8) In case of emergency, and with the approval of the department, sell agricultural products and livestock on the open market. Receipts from these sales shall be deposited in a revolving accounting entity;

(9) Provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions;

(10) Pay an inmate of the state prison an amount not exceeding one dollar (\$1) per day as an incentive for the performance of work, based on the following criteria:

- (a) Knowledge and skill
- (b) Attitude toward authority

(c) Physical effort

(d) Responsibility for equipment and materials

(e) Regard for safety of others. All these wages shall be paid from receipts from the sale of goods produced or manufactured at the institution where the resident resides, or from the program that the inmate was working in.

History: En. Sec. 10, Ch. 199, L. 1965; amd. Sec. 51, Ch. 120, L. 1974; amd. Sec. 1, Ch. 275, L. 1975.

Amendments

The 1974 amendment substituted "and other related articles" in subdivision (7) for "and other articles needed by the registrar of motor vehicles"; substituted "department" for "board" in subdivision

(8); and made minor changes in phraseology and punctuation.

The 1975 amendment substituted "a revolving accounting entity" in subdivision (8) for "the general fund"; increased the amount specified in subdivision (10) from fifty cents to \$1.00; and added at the end of the section "or from the program that the inmate was working in."

80-1503. Public sale of goods prohibited—exchange for products of other states—labor contracts. (1) Except as provided in subsection (8) of section 80-1501, and except for hides and livestock by-products best utilized in a rendering plant, and except for articles made by a resident of an institution for his own profit, the sale or exchange, directly or indirectly to the consuming public of goods produced or manufactured at an institution, is prohibited.

(2) and (3) * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 199, L. 1965; amd. Sec. 1, Ch. 383, L. 1975.

Amendments

The 1975 amendment inserted "and ex-

cept for hides and livestock by-products best utilized in a rendering plant" in subsection (1).

CHAPTER 16—PAYMENTS FOR THE CARE OF RESIDENTS OF INSTITUTIONS

Section

80-1601. Institutions subject to per diem and ancillary charges.

80-1602. Definition of terms.

80-1603. Computation of per diem rate, monthly assessment, ability to pay, and liability.

80-1604. Collection of per diem and ancillary charges—claims against estates—deposit of receipts.

80-1605. Parental liability for costs incurred by resident of institutions.

80-1606. Rules of the department.

80-1607. Responsibility under prior law.

80-1601. Institutions subject to per diem and ancillary charges. The department of institutions shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

- (1) Warm Springs state hospital;
- (2) Boulder river school and hospital;
- (3) Galen state hospital;
- (4) Montana veterans' home;
- (5) Montana center for the aged; and
- (6) Eastmont training center.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971; amd. Sec. 52, Ch. 120, L. 1974; amd. Sec. 1, Ch. 450, L. 1977.

Amendments

The 1967 amendment, in subparagraph (2), substituted "Warm Springs state hospital" for "State Hospital"; in subparagraph (3), substituted "Boulder river school and hospital" for "State Training School and Hospital"; and, in subparagraph (4), substituted "Galen state hospital" for "State Pulmonary Disease Hospital."

The 1969 amendment added subparagraph (7).

The 1971 amendment inserted "and for the care of those persons in foster homes or group homes under the jurisdiction of the aftercare division of the department of institutions" at the end of the preliminary paragraph.

The 1974 amendment substituted "under the provisions of the department" at the

end of the preliminary paragraph for "under the jurisdiction of the aftercare division of the department of institutions"; and made minor changes in phraseology.

The 1977 amendment inserted "and ancillary" in the preliminary paragraph; deleted "and for the care of those persons in foster homes or group homes under the provisions of the department" at the end of the preliminary paragraph; deleted a subdivision (1) reading: "Montana children's center"; redesignated subdivisions (2) through (7) as subdivisions (1) through (6); and made minor changes in phraseology and punctuation.

Effective Dates

Section 2 of Ch. 276, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

Section 2 of Ch. 191, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

80-1602. Definition of terms. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Ancillary charge" means identifiable, direct, resident service expenses, as budgeted, including, but not limited to, operating room, anesthesia, x-ray, laboratory, blood bank, oxygen therapy, physical therapy, medical supply, drug, and specialized medical equipment, expenses.

(2) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(3) "Per diem" means the gross daily cost of operating an institution, as budgeted, excluding the cost of educational programs and ancillary charges, divided by the full-time equivalent resident load. However, a schedule of differing per diem charges may be computed, including a schedule of charges for residents treated on an outpatient basis, for each program established or funded by the legislature and assigned to an institution listed in 80-1601.

(4) "Resident" means any person who is receiving care from, or who is a resident of, an institution listed in 80-1601.

(5) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(6) "Long-term resident" means a resident in an institution listed in 80-1601 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(7) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(8) "Department" means the department of institutions provided for in Title 82A, chapter 8.

History: En. Sec. 14, Ch. 199, L. 1965; amd. Sec. 1, Ch. 336, L. 1974; amd. Sec. 2, Ch. 450, L. 1977.

Amendments

The 1974 amendment inserted subdivision (1) and renumbered the remaining subdivisions; deleted "capital outlay for physical plant and" in the first sentence of subdivision (3) after "excluding"; inserted "and ancillary charges" in the first sentence of subdivision (3); and made a minor change in phraseology.

The 1977 amendment substituted "resident" near the beginning of subdivision (1) for "patient"; inserted "as budgeted" in subdivisions (1) and (3); substituted the second sentence of subdivision (3) for "The per diem may be computed separately for distinctively different programs at multipurpose institutions"; substituted subdivision (5) for "Responsible person" means a person responsible for the support and maintenance of a resident"; added subdivisions (6) through (8); and made minor changes in phraseology and style.

80-1603. Computation of per diem rate, monthly assessment, ability to pay, and liability. (1) The department shall assess monthly against each resident or financially responsible person the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge based upon financial information given to the department during its investigation conducted according to the rules of the department. The per diem shall be computed on July 1 of each year by the department.

(2) An assessment made by the department under this section shall be based on the resident's or financially responsible person's ability to pay. The department shall prescribe rules which establish criteria and a procedure for determining ability to pay. The department may not make an assessment which would place an undue financial burden on the resident or the financially responsible person.

(3) (a) Each agency of the state shall give all reasonable assistance to the department in obtaining all information necessary for the proper financial investigation of residents or financially responsible persons.

(b) Upon request of the department, the resident or financially responsible person shall make available to the department any financial information which the department considers essential for the purpose of determining ability to pay and which, under federal law, the department is not prohibited from seeking or obtaining from the resident or financially responsible person. Willful failure to provide the financial information requested by the department may result in a determination of ability to pay up to the full per diem and full ancillary charges until such time as the requested information is provided and the department makes a new determination of ability to pay.

(c) (i) A representative of the department authorized by the director may administer oaths, take testimony, and subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for care as provided by this chapter.

(ii) A person who fails to obey the subpoena, upon petition of the department to any judge of a district court of the state, may be ordered

by the judge to appear and show cause for his disobedience of the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when so ordered by the judge may be punished for contempt of court on application of the department to the district court.

(4) If a resident or financially responsible person disagrees with the determination of the department as to his ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination with the board of institutions, according to the procedure established by rules of the department. If the resident or financially responsible person disagrees with the determination of the appeal by the board of institutions, an appeal may be filed in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment.

(5) At appropriate intervals, the department shall review each determination of ability to pay and, if there has been a significant change in a resident's or financially responsible person's ability to pay, shall make a new determination. However, a new determination of ability to pay may not be applied retroactively unless the new determination results in a monthly assessment which is less than the previous monthly assessment or unless the resident or financially responsible person has materially misrepresented any financial information. The department shall make rules to implement the provisions of this subsection, including but not limited to rules for credit or refund of any overpayment resulting from an assessment retroactively reduced because of a new determination of ability to pay.

(6) The resident or financially responsible person is liable only for the per diem and ancillary charges which the department has assessed and billed the resident or financially responsible person. If amounts assessed and billed are retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person is liable only for the reduced amount for the period of time covered by the retroactive reduction.

(7) No resident or financially responsible person is financially liable for care provided to a resident under any provision of a criminal statute.

(8) A resident of an institution listed in 80-1601 may not be released by reason of the nonpayment of the per diem or the ancillary charge unless, by certification of a physician consulted by the superintendent of the institution, the release is medically advisable.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 450. The code commissioner has directed that

the section be set forth as amended by Ch. 450.

Amendments

The 1969 amendment rewrote subsection (1), for previous text of which see parent volume; inserted subsections (2) to (4); redesignated and rewrote former subsection (2) as subsection (5); redesignated former subsection (3) as subsection (6)

and deleted "and may, if necessary, request a further investigation by a county department of public welfare" at the end of the first sentence; and redesignated former subsection (4) as subsection (7).

Chapter 120, Laws of 1974, substituted "department" for "director of institutions" in subsection (1); substituted "department" for "department of institutions" in the first sentence of subsection (2); substituted "department" for "director or representative of the department" in the third and fifth sentences of subsection (2); substituted "A representative" for "The director and any representative" in the second sentence of subsection (2); deleted "deemed material appurtenant" after "documents" in the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

Chapter 336, Laws of 1974, inserted "plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge" in the first sentence of subsection (1); inserted subsection (2); inserted the references to ancillary charge in subsections (6) and (7); and made minor changes in phraseology.

Chapter 37, Laws of 1977, deleted "of institutions" after "board" in two places; and made minor changes in phraseology, punctuation and style.

Chapter 450, Laws of 1977, inserted "financially" before "responsible person" throughout the section; added "conducted according to the rules of the department" at the end of the first sentence of subsection (1); inserted the second sentence of subsection (2); divided former subsection (3) into subdivisions (3)(a) and (3)(c); deleted "For the purpose of these investigations" at the beginning of subdivision (3)(a); substituted "financial investigation of residents or financially responsible persons" at the end of subdivision (3)(a)

for "implementation of the purposes of this investigation"; inserted subdivision (3)(b); deleted a former subsection (4) reading "The state has a claim against the estate of a patient and against the estate of a responsible person, for an amount due to the state at the date of death of the resident or the responsible person. The claim against the estate of a responsible person does not have priority against the estate for the amount necessary to rear and educate surviving children of the responsible person"; deleted a former subsection (5) reading "The attorney general shall collect any claim which the state may have against such estate. This claim may not be enforced against any real estate while it is occupied as a home by the surviving spouse or the resident or responsible person"; redesignated former subsection (6) as subsection (4); added "according to the procedure established by rules of the department" at the end of the first sentence of subsection (4); inserted "financially responsible person" in the last sentence of subsection (4); substituted subsection (5) for the first sentence of former subsection (7) which read: "The department may, at any time, review and change a determination for per diem or ancillary charge payments"; inserted subsections (6) and (7); substituted subsection (8) for the second sentence of former subsection (7) which read: "In any case, however, a resident of an institution may not be released by reason of the nonpayment of per diem or ancillary charge, if in the judgment of the superintendent of the institution of which he is a resident, this release is medically inadvisable"; deleted a former subsection (8) reading "A per diem payment received by the department shall be deposited in the state treasury to the credit of the general fund"; and made minor changes in phraseology and punctuation.

80-1604. Collection of per diem and ancillary charges—claims against estates—deposit of receipts. (1) If a resident or financially responsible person liable for payment of per diem and ancillary charges due under this chapter refuses or fails to make the payment, it is collectible by the department of revenue in the manner set forth in Title 84, chapter 71, for the collection of debts owing to the state or by a civil suit brought by the department of revenue in the name of the state of Montana.

(2) The state has a claim against the estate of a resident or against the estate of a financially responsible person for an amount due to the state at the death of the resident or financially responsible person. The attorney general shall collect any claim which the state may have against the estate. However, the claim may be enforced only to the extent that enforcement does not deprive a surviving spouse, child, or parent of the resident or financially responsible person of:

(a) an amount necessary for reasonable living expenses or educational expenses; or

(b) real estate while it is occupied as a home by the surviving spouse, child, or parent of the resident or financially responsible person.

(3) The department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

History: En. Sec. 16, Ch. 199, L. 1965;
amd. Sec. 4, Ch. 450, L. 1977.

Amendments

The 1977 amendment rewrote this section. For prior version, see parent volume.

80-1605. Parental liability for costs incurred by resident of institutions.

(1) The natural or adoptive parents of long-term residents are liable only for the charges made by the department for care in an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

(2) Natural or adoptive parents of a long-term resident are not liable for any charges made by the department for care of a long-term resident incurred or accrued subsequent to the resident attaining age 18.

History: En. 80-1605 by Sec. 1, Ch. 324, L. 1974; amd. Sec. 5, Ch. 450, L. 1977.

Title of Act

An act providing that parents of long-term residents at institutions administered by the department of institutions are liable only to the extent of the cost of caring for a normal child at home as determined from standard sources by the department of institutions.

Amendments

The 1977 amendment deleted "at facilities owned or operated by the department of institutions" after "long-term residents" near the beginning of subsection (1); substituted "charges made by the department for care" in subsections (1) and (2) for

"charges made by such facility for treatment, care and maintenance"; deleted "in a facility owned or operated by the department" after "long-term resident" near the beginning of subsection (2); deleted a former subsection (3) reading "For purposes of this section the term 'long term resident' is defined as a person who has been a resident in a facility owned or operated by the department for a continuous period in excess of one hundred twenty (120) days. No absence of a resident from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the one hundred twenty (120) days herein required to obtain the status as a long term resident"; and made minor changes in phraseology and style.

80-1606. Rules of the department. In addition to the specific provisions of this chapter which require the department to make rules, the department may make rules for the administration of this chapter. All rules made by the department under the provisions of this chapter shall be made pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. 80-1606 by Sec. 2, Ch. 324, L. 1974; amd. Sec. 6, Ch. 450, L. 1977.

Amendments

The 1977 amendment completely rewrote this section which read "This act is intended to relieve and shall be con-

strued to relieve any parent of any liability for charges in excess of the limit set in section 1 of this act for treatment, care and maintenance of a natural or adoptive child at facilities owned or operated by the department of institutions."

80-1607. Responsibility under prior law. No determination of ability to pay or assessment made under prior law is affected by the provisions of this act until the department has reviewed the determination and assessment in accordance with the provisions of this act. The department shall

make the review within 1 year from the effective date of rules made under this act for ability to pay determinations and assessments.

History: En. 80-1607 by Sec. 7, Ch. 450, L. 1977.

Title of Act

An act relating to the payments for care of residents of institutions, district youth guidance homes, and custodial agencies; amending sections 10-1238, 10-1249, and 80-1601 through 80-1606, R. C. M. 1947; repealing section 38-210; and providing an immediate effective date.

Saving Clause

Section 10 of Ch. 450, Laws 1977 read "This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 11 of Ch. 450, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 450, Laws 1977 read "Section 38-210, R. C. M. 1947, is repealed."

Effective Date

Section 13 of Ch. 450, Laws 1977 provided the act should be effective on its passage and approval. Approved April 19, 1977.

CHAPTER 17—GALEN STATE HOSPITAL

Section

- 80-1701. Location and primary function of hospital—secondary function.
- 80-1702. Qualifications of superintendent.
- 80-1703. Transfer of patient to mental institution—notice to relatives.
- 80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from.
- 80-1705. Alcoholism services center.

80-1701. Location and primary function of hospital—secondary function. (1) The institution located at Galen is the Galen state hospital and, as its primary function, provides:

(a) Treatment of tuberculosis and silicosis (commonly called miner's consumption).

(b) Detoxification, diagnosis, treatment and referral for those persons who seek relief from the illness of alcoholism.

(2) If there are space and funds available, the hospital shall also treat the following:

(a) Emphysema, bronchiectasis, carcinoma of the lung and other diseases of the lung pertaining to pulmonary disorders.

(b) Geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution.

History: En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967; amd. Sec. 1, Ch. 90, L. 1974.

Amendments

The 1967 amendment substituted "Galen state hospital" for "State Pulmonary Disease Hospital" in subsection (1).

The 1974 amendment inserted subdivision (1)(b).

80-1702. Qualifications of superintendent. The superintendent of Galen state hospital shall be a physician legally qualified to practice medicine in

Montana with at least (4) years in the practice of his profession, including at least one (1) year's experience in a general hospital.

History: En. Sec. 18, Ch. 199, L. 1965; **Amendments**
amd. Sec. 6, Ch. 320, L. 1967.

The 1967 amendment substituted "Galen state hospital" for "state pulmonary disease hospital."

80-1703. Transfer of patient to mental institution—notice to relatives. A mentally retarded or mentally ill person residing at Galen state hospital may be transferred to the Warm Springs state hospital, the Montana center for the aged, or the Boulder river school and hospital with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 19, Ch. 199, L. 1965;
amd. Sec. 7, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "state pulmonary dis-

ease hospital"; substituted "Warm Springs state hospital" for "state hospital"; substituted "Boulder river school and hospital" for "state training school and hospital"; and made a minor change in punctuation.

80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from. The reception and evaluation center for children at the Galen state hospital as established by law shall be subject to the rules and regulations adopted and promulgated by the state department of institutions and shall accept from the juvenile courts the temporary custody of children then being held on a charge, under which the child could be adjudged a delinquent. For the period during which children are in the custody of the reception and evaluation center for children, it shall provide for them a residential program of care and study. The reception and evaluation center for children may not in any event detain or hold a child in custody for a period of time greater than forty-five (45) days. To assist the juvenile courts in making a decision regarding the child's disposition the reception and evaluation center for children will forward recommendations to the court to include, but not limited to, a psychiatric social summary; psychological evaluation, medical report; diagnostic school report; and a psychiatric report prepared by a consulting psychiatrist, for those for whom this kind of evaluation is considered necessary. Transportation to and from the reception and evaluation center shall be provided by the county of such child's residence.

History: En. Sec. 20, Ch. 320, L. 1967.

Repealing Clause

Section 21 of Ch. 320, Laws 1967 read "Sections 80-2201 and 80-2208, R. C. M. 1947, are hereby repealed."

80-1705. Alcoholism services center. (1) There is an alcoholism services center located at the Galen state hospital. The admittance and discharge procedures for alcoholics are the same as for ill persons.

(2) As used in this section:

(a) "Alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations or economic functioning, or to an extent which endangers the public health, welfare or safety.

(b) An "alcoholic" is a person suffering from the illness of alcoholism.

(3) The alcoholism services center shall:

(a) Provide care, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for the arrestment of the illness of alcoholism or the complications thereof;

(b) Consult with, inform, guide and co-operate with Montana communities and citizens' committees in establishing local alcoholism treatment, rehabilitation, referral, public information, and educational services;

(c) Accumulate and disseminate scientific information on alcoholism to all agencies, groups and individuals, public or private, who require or seek such services;

(d) Initiate, encourage and co-ordinate practical research on alcoholism in Montana aimed at improving treatment, rehabilitation, referral and prevention techniques or services;

(e) Initiate and co-ordinate with the schools and institutions of higher learning in Montana courses of study and clinical experience in the evaluation, care, treatment, referral, rehabilitation and aftercare of alcoholics for both professional and lay persons requiring such information and experience; and

(f) Enter into co-operative agreement with other state, local or federal agencies to further the work of the center and community programs.

History: En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967; Sec. 80-2404, R. C. M. 1947; amd. and redes. 80-1705 by Sec. 2, Ch. 90, L. 1974.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" at the end of the first sentence of subsection (1).

The 1974 amendment renumbered this section; substituted "located at the Galen" for "at the Warm Springs" near the beginning of subdivision (1); deleted "mentally" before "ill persons" at the end of subdivision (1); deleted "custody" as the second word in subdivision (3)(a); substituted "evaluation" for "diagnosis" near the beginning of subdivision (3)(a); inserted "referral" after "treatment" near the beginning of subdivision (3)(a); substituted "are referred for the arrestment of" near the end of the same subdivision for "seek, or are required to seek, relief from"; deleted "who seek assistance"

after "committees" from subdivision (3)(b); inserted "referral" and "and educational" in subdivision (3)(b); inserted "referral" near the end of subdivision (3)(d); inserted the present subdivision (3)(e), redesignating the former subdivision (3)(e) as subdivision (3)(f); inserted in the present subdivision (3)(f) "local or federal" before "agencies"; added "and community programs" at the end of the present subdivision (3)(f); and made minor changes in punctuation and phraseology.

Repealing Clause

Section 34 of Ch. 320, Laws 1967 read "Section 80-2201, R. C. M. 1947, and section 80-2208, R. C. M. 1947, are hereby repealed."

Effective Date

Section 35 of Ch. 320, Laws 1967 read "The institutional name changes specified in this act shall be effective January 1, 1968."

CHAPTER 18—MONTANA VETERANS' HOME

Section

80-1801. Location and function of home—persons admitted.

80-1803. Eligibility for residence in home.

80-1801. Location and function of home—persons admitted. The institution at Columbia Falls is the "Montana Veterans' Home" and, as its primary function, provides home and subsistence for honorably discharged veterans. The department may also admit spouses or surviving spouses of honorably discharged veterans to the home if space allows.

History: En. Sec. 20, Ch. 199, L. 1965; **Amendments**
amd. Sec. 40, Ch. 535, L. 1975.

The 1975 amendment substituted "spouses or surviving spouses" for "wives or widows" in the second sentence.

80-1803. Eligibility for residence in home. To be eligible for residence in the Montana veterans' home under the regulations prescribed by the state department of institutions a person shall

(1) Be an honorably discharged veteran, or the spouse or surviving spouse of a veteran, who served in the armed forces of the United States.

(2) to (5) * * * [Same as parent volume.]

History: En. Sec. 22, Ch. 199, L. 1965; "spouse or surviving spouse" for "wife or
amd. Sec. 41, Ch. 535, L. 1975. widow" in subdivision (1); and deleted a
subdivision (6) reading "If a woman, be
fifty (50) years of age or older."

Amendments

The 1975 amendment substituted

CHAPTER 19—STATE PRISON

Section

80-1903. Working hours of prison employees.

80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law.

80-1906. Clothing and money furnished on discharge or parole.

80-1909. Establishment of intensive rehabilitation center authorized.

80-1910. Standards of admission.

80-1911. Management and control of center.

80-1912. Expense of trial for offenses committed in prison.

80-1903. Working hours of prison employees. A period of eight (8) hours in each period of twenty-four (24) consecutive hours constitutes a day's work for all employees of the state prison. The staff of correctional personnel shall not work more than forty (40) hours or five (5) days a week except in cases of riots, escapes or other emergencies endangering health, life, or property.

History: En. Sec. 26, Ch. 199, L. 1965; **Amendments**
amd. Sec. 1, Ch. 232, L. 1969.

The 1969 amendment substituted "forty (40)" for "forty-eight" before "hours" and "five (5)" for "six" before "days" in the second sentence.

80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law. (1) The state department of institutions shall adopt rules and regulations providing for the granting of good

time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) to (c) * * * [Same as parent volume.]

(d) thirteen (13) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) ten (10) days for each pint of blood donated by an inmate;

(f) five (5) days per month for those inmates participating in self-improvement activities designated by the department of institutions.

(2) * * * [Same as parent volume.]

(3) This section applies to all persons who are on probation or parole or eligible to be placed on probation or parole. No person convicted and sentenced before April 1, 1955, shall have his good time allowance reduced as a result of this section.

History: En. Sec. 23, Ch. 199, L. 1965; amd. Sec. 1, Ch. 219, L. 1967; amd. Sec. 1, Ch. 113, L. 1974; amd. Sec. 1, Ch. 312, L. 1975.

Amendments

The 1967 amendment added subdivisions (d) and (e) in subsection (1).

The 1974 amendment inserted "Except as provided in subsection (4)" in the third sentence of subsection (1); substituted "The provisions of subsections (1) and (2) apply" in subsection (3) for "This section applies"; and added subsections (4) and (5).

The 1975 amendment added subdivision (1)(f); substituted "This section applies" for "The provisions of subsections (1) and (2) apply" at the beginning of subsection (3); deleted the reference to subsection (4) inserted by the 1974 amendment; and deleted subsections (4) and (5), which read: "(4) The maximum allowances for good time described in subsection (1) shall be reduced for a person who has been convicted of a felony offense on more than two (2) occasions within a ten (10) year period; provided, however, for the purpose of determining such ten (10) year period, the time during which a person is incar-

cerated shall not be counted. The maximum amount of good time allowable for such a habitual offender shall be computed as follows: (a) five (5) days per month for inmates assigned within the confines of the walls of the prison; (b) eight (8) days per month for those inmates placed outside the confines of the walls of the prison; (c) ten (10) days per month for those inmates who have been assigned outside the walls of the prison for an uninterrupted period of one (1) year on a minimum status; (d) eight (8) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole; (e) five (5) days for each pint of blood donated by an inmate.

"(5) No person convicted and sentenced before July 1, 1974, shall have his good time allowance reduced as required by subsection (4)."

Discretion of Parole Board

Where petitioner violated his parole, it was completely within discretion of parole board to withdraw his "good time" as provided in this section. Petition of Spurlock, 153 M 475, 458 P 2d 80.

DECISIONS UNDER FORMER LAW

Forfeiture of Good Time Allowance

A prisoner who, by virtue of former section 80-740.1, was earning good time under former section 80-739, the prior law, was subject to the provisions of former section 80-741, the forfeiture statute, which existed under the old law. Petition of Brandt, 147 M 175, 410 P 2d 708.

Contention by petitioner for writ of

habeas corpus that board of pardons did not have authority to revoke earned good time after violation of parole by petitioner under this section was without merit since petitioner was sentenced prior to 1955 and section 80-741, in effect at that time, allowed such revocation of earned good time. Petition of McIlhargey, 154 M 510, 463 P 2d 476.

80-1906. Clothing and money furnished on discharge or parole. The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state shall receive five dollars (\$5); all other discharged or paroled inmates shall receive an amount not exceeding twenty-five dollars (\$25). However, the department may establish rules which allow it to deduct up to one-fourth ($\frac{1}{4}$) of an inmate's wages earned under section 80-1501 and hold that money in a special account to be disbursed to the inmate when he is discharged or paroled.

History: En. Sec. 29, Ch. 199, L. 1965; amd. Sec. 1, Ch. 276, L. 1975.

Amendments

The 1975 amendment added the last sentence; and made minor changes in style.

80-1908. Repealed.

Repeal

Section 80-1908 (Sec. 31, Ch. 199, L. 1965; Sec. 1, Ch. 294, L. 1969), relating to

the commitment of inmates to the state hospital, was repealed by Sec. 19, Ch. 546, Laws 1977.

80-1909. Establishment of intensive rehabilitation center authorized. Within the budgetary limits provided by law, the department of institutions may establish on property owned by the state, on which prison facilities are or may be located, a prison facility designed to segregate certain types of prisoners.

History: En. Sec. 1, Ch. 221, L. 1969; amd. Sec. 54, Ch. 120, L. 1974.

for the management and control of such center.

Title of Act

An act providing for the establishment of an intensive rehabilitation center at the Montana state prison; providing standards of admission to such center; providing

Amendments

The 1974 amendment substituted "department of institutions" for "board of institutions"; and made minor changes in phraseology and punctuation.

80-1910. Standards of admission. The facility shall be designated and known as the "intensive rehabilitation center" and shall be the place of custody for those male prisoners who in consideration of their age, type of crime for which committed, physical condition, behavior, attitude and prospects of reformation, are those most likely to benefit from such place of custody.

History: En. Sec. 2, Ch. 221, L. 1969.

80-1911. Management and control of center. The warden of the Montana state prison, subject to the supervision and control of the department of institutions shall operate and manage such intensive rehabilitation center, and shall make such rules and regulations for the operation, management, and admission to such center as may from time to time be necessary and desirable.

History: En. Sec. 3, Ch. 221, L. 1969.

80-1912. (10872) Expense of trial for offenses committed in prison. Whenever a trial takes place of any person under any of the provisions of 94-7-306 and whenever a prisoner in the state prison is tried for any crime

committed therein, the county clerk of the county where such trial is held shall make out a statement of all the costs incurred by the county for the trial of such case and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the department of institutions for its approval and after such approval, the department must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was held.

History: En. Sec. 226, Pen. C. 1895; re-en. Sec. 8228, Rev. C. 1907; re-en. Sec. 10872, R. C. M. 1921; Sec. 94-4209, R. C. M. 1947; redes. 80-1912 and amd. by Sec. 27, Ch. 513, L. 1973; amd. Sec. 47, Ch. 37, L. 1977. Cal. Pen. C. Sec. 111.

Compiler's Notes

The previous text of this section may be found under sec. 94-4209 in bound Volume Eight.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to section 94-7-306 for a reference to sections 94-4203 and 94-4204 near the beginning of the section.

The 1977 amendment substituted references to the department of institutions throughout the section for references to the board of state prison commissioners; and made minor changes in phraseology, punctuation and style.

CHAPTER 20—STATE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

80-2001. Bureau under prison warden—appointment of supervisor.

Cross-References

Bureau abolished and functions transferred, sec. 82A-1202(1).

CHAPTER 21—MONTANA CHILDREN'S CENTER

Section

80-2105. Commitment of resident to Mountain View school or Pine Hills school.
80-2106. Transfer of child to mental institution—notice to parents or guardian.

80-2101. Location and function of center.

Cross-References

High school tuition payments, sec. 75-6319.

80-2105. Commitment of resident to Mountain View school or Pine Hills school. When a child who resides at the Montana children's center becomes incorrigible, or when his conduct endangers the welfare of the other residents of the home or any other person, the superintendent, with the consent of the department, shall petition the district court for commitment of the child to the Mountain View school or the Pine Hills school.

History: En. Sec. 42, Ch. 199, L. 1965; amd. Sec. 55, Ch. 120, L. 1974.

Amendments

The 1974 amendment inserted "Montana" before "children's center"; sub-

stituted "department" for "department of institutions"; substituted "Mountain View school or the Pine Hills school" for "state vocational school for girls or the state industrial school"; and made minor changes in phraseology and punctuation.

80-2106. Transfer of child to mental institution—notice to parents or guardian. (1) The superintendent of the Montana children's center may, with the approval of the department, transfer a child to Warm Springs state hospital or Boulder river school and hospital. The transfer order must be certified by a licensed physician that he has personally examined the child and is of the opinion that he is mentally ill or mentally retarded, as the case may be.

(2) Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the child, and to the district court which committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 43, Ch. 199, L. 1965; amd. Sec. 56, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "Warm Springs state hospital or Boulder river

school and hospital" in subsection (1) for "the state hospital or state training school and hospital"; substituted "department" for "director of institutions" and "director" in subsection (2); and made minor changes in phraseology and punctuation.

CHAPTER 22—JUVENILE FACILITIES

Section

80-2202. Superintendents to manage facilities.

80-2203. Curricula at facilities.

80-2204. Maximum age of commitment.

80-2205. Medical examination before commitment—records required to accompany child committed.

80-2206. Commitment expenses—arrangement for transportation.

80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court.

80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility.

80-2211. Child leaving juvenile facility without permission—apprehension and return.

80-2212. Aiding resident in leaving school—penalty.

80-2213. University aid to residents of schools.

80-2201. Repealed.

Repeal

This section (Sec. 45, Ch. 199, L. 1965), relating to the location and functions of

vocational and industrial schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2202. Superintendents to manage facilities. Each facility provided for herein shall be under the immediate management and control of a superintendent.

History: En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Each

facility provided for herein" for "The state vocational school for girls and the state industrial school"; and made a minor change in phraseology.

80-2203. Curricula at facilities. The academic and vocational curriculum in facilities containing academic and vocational training shall include such academic and vocational subjects as are taught in the public schools

of the state, and shall conform to the standards set by the state board of education.

History: En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "The

academic and vocational curriculum in facilities containing academic and vocational training" for "The curricula of the state vocational school for girls and the state industrial school."

80-2204. Maximum age of commitment. No child shall be committed by any juvenile court to the Mountain View school, Pine Hills school or other juvenile facility who has attained the age of eighteen (18) years, except, however, that any person under twenty-one (21) years who prior to attaining the age of eighteen (18) years came under the jurisdiction of the juvenile court by reason of delinquent conduct and whose adjudication of delinquency, including the finding that commitment to some institution was necessary is not made until after the child reaches the age of eighteen (18) years shall be committed to the department of institutions who shall then have the obligation to test and evaluate the person to determine the proper place of detention for the person who shall thereupon be confined at that institution until the person shall have attained the age of twenty-one (21) years unless sooner discharged by the department of institutions.

History: En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967; amd. Sec. 15, Ch. 262, L. 1969.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1969 amendment rewrote this section which formerly read, "No child shall

be committed to the Mountain View school, Pine Hills school or the department of institutions who has attained the age of eighteen (18)."

Repealing Clause

Section 16 of Ch. 262, Laws 1969 read "Sections 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, 10-632, 75-3001, and 75-3002, R. C. M. 1947, are repealed."

80-2205. Medical examination before commitment—records required to accompany child committed. Before a child is committed to the Mountain View school or the Pine Hills school or the department of institutions he shall be examined by a licensed physician. A child committed to one of the schools or the department of institutions shall be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

History: En. Sec. 49, Ch. 199, L. 1965; amd. Sec. 14, Ch. 320, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

80-2206. Commitment expenses—arrangement for transportation. The expenses of committing a child to the Mountain View school or the Pine Hills school or to the department of institutions and transporting such child to the Mountain View school or the Pine Hills school or the place designated by the department for it to receive custody and the expense of returning such child to the county of residence shall be borne by the county of residence. The district judge shall arrange for transportation

of the child to the place where the department of institutions has directed that it will receive custody of such child.

History: En. Sec. 50, Ch. 199, L. 1965;
amd. Sec. 15, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2207. Repealed.

Repeal

Section 80-2207 (Sec. 51, Ch. 199, L. 1965), relating to county and federal payments for residents at the industrial

school and the construction of a physical education building, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-2208. Repealed.

Repeal

This section (Sec. 52, Ch. 199, L. 1965), relating to the placement or discharge of residents of vocational and industrial

schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court. (1) The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder river school and hospital and unless medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department of institutions shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 53, Ch. 199, L. 1965;
amd. Sec. 16, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility. (1) Upon the application of a person under the age of twenty-one (21) years who has been sentenced to the state prison, or upon the application of his parents or guardians, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department of institutions during his minority or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of institutions indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor after consulting with the department of institutions with the approval of the

board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the department juvenile facilities or while a refugee from one of the department juvenile facilities, shall not be considered as a part of his original sentence.

Upon recommendation of the warden and with the approval of the department of institutions a person under the age of twenty-one (21) years, who has been sentenced to the state prison, may be transferred to any juvenile facility under the jurisdiction and control of the department. Provided, further, however, that upon recommendation of the warden and approval of a person sentenced to the state prison, or application of a person sentenced to the state prison and approval of the warden, and with the approval of the department of institutions such person sentenced to the state prison who is twenty-five (25) years old or younger may be transferred to the Swan River youth forest camp. Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred.

If such person's behavior after transfer to such juvenile facility indicated he might be released on parole or his sentence commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor who may, in their discretion, parole such person or commute his sentence.

If such person's behavior after transfer to a juvenile facility indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent, and with the approval of the department, such person shall be returned to the state prison to serve out his unexpired term.

History: En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967; amd. Sec. 1, Ch. 367, L. 1971.

Amendments

The 1967 amendment, in subsection (1), substituted "twenty-one (21)" for "eighteen (18)"; substituted "department of institutions" for "state vocational school for girls or state industrial school" before "during his minority"; in subsection (2), substituted "committed to the department of institutions" for "sent to one of such schools" before "indicates"; substituted "one of the department's juvenile facilities" for "one of the schools" after "reside at"; substituted "department juvenile facilities or while a refugee from one of

the department juvenile facilities" for "schools, or while a refugee from one of the schools" before "shall not be considered"; and added the second, third and fourth paragraphs in subsection (2).

The 1971 amendment substituted "person" for "child" throughout the section; and inserted in the second paragraph of subsection (2) the proviso for the transfer of prisoners of the age of twenty-five or younger to the Swan River youth forest camp.

Effective Date

Section 2 of Ch. 367, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

80-2211. Child leaving juvenile facility without permission—apprehension and return. A child who has left a juvenile facility of the department without permission may be apprehended and returned by any citizen. The term "juvenile facility of the department" means any facility under the supervision and control of the Montana state department of institutions, whose primary function is the care, training, custody and control

of children and specifically includes the Pine Hills school for boys, the Mountain View school for girls, the Montana children's center, Boulder river school and hospital, the Swan river youth forest camp and Eastmont training center.

History: En. Sec. 55, Ch. 199, L. 1965; juvenile facility of the department" for amd. Sec. 18, Ch. 320, L. 1967; amd. Sec. "the state vocational school for girls or 1, Ch. 313, L. 1973. state industrial school."

Amendments

The 1967 amendment substituted "a

The 1973 amendment added the second sentence.

80-2212. Aiding resident in leaving school—penalty. A person who permits or assists a resident of any juvenile facility to leave a facility without permission, or who furnished or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission, or who harbors or conceals a resident who has left without permission, shall on conviction be punished by imprisonment for a term of not less than six (6) months or more than two (2) years, or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965; juvenile facility to leave a facility" for amd. Sec. 19, Ch. 320, L. 1967. "the state vocational school for girls or the state industrial school to leave the school" after "a resident of."

Amendments

The 1967 amendment substituted "any

80-2213. University aid to residents of schools. The department may, on the recommendation of the superintendent, authorize a resident of the Mountain View school or Pine Hills school who has completed high school, and who is otherwise eligible, to receive up to eight hundred dollars (\$800) per year toward his expenses incurred in attending a unit of the university of Montana. The money may be used for transportation, clothing, books, board and room, and shall be paid in the same manner as other expenses of the school. The university of Montana shall not charge any fees or tuition for these residents. No more than eight (8) residents of each school may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents it has designated to receive the benefits for the forthcoming school year.

History: En. Sec. 57, Ch. 199, L. 1965; amd. Sec. 57, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "department" for "department of institu-

tions" in two places; substituted "Mountain View school or Pine Hills school" for "state vocational school for girls or state industrial school"; and made minor changes in phraseology and punctuation.

CHAPTER 23—BOULDER RIVER SCHOOL AND HOSPITAL

Section

80-2310. Mental retardation center at Glendive—services provided.

80-2301, 80-2302. Repealed.

Repeal

Sections 80-2301 and 80-2302 (Secs. 58, 59, Ch. 199, L. 1965; Secs. 22, 23, Ch. 320,

L. 1967), relating to management of the Boulder River school and hospital, were repealed by Sec. 7, Ch. 111, Laws 1971.

80-2303 to 80-2309. Repealed.**Repeal**

Sections 80-2303 to 80-2309 (Secs. 60 to 66, Ch. 199, L. 1965; Secs. 24 to 30, Ch. 320, L. 1967), relating to admission to

Boulder river school for mentally retarded persons, were repealed by Sec. 35, Ch. 468, Laws of 1975.

80-2310. Mental retardation center at Glendive—services provided. The mental retardation center at Glendive is the "Eastmont training center" for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at Boulder river school and hospital. However, the center may not be a duplication of Boulder river school and hospital, but shall be an extension thereof.

History: En. Sec. 3, Ch. 255, L. 1967; amd. Sec. 1, Ch. 275, L. 1969; amd. Sec. 1, Ch. 101, L. 1973; amd. Sec. 58, Ch. 120, L. 1974.

The 1973 amendment inserted the second sentence.

The 1974 amendment deleted a clause in the first sentence ordering the establishment of a mental retardation center at Glendive; substituted "Boulder river school and hospital" for "state training school and hospital at Boulder"; and made minor changes in phraseology and punctuation.

Amendments

The 1969 amendment inserted "to be called 'Eastmont training center'" after "at Glendive" in the first sentence.

80-2311. Repealed.**Repeal**

Section 80-2311 (Sec. 4, Ch. 255, L. 1967), limiting the capacity of the mental

retardation center at Glendive, was repealed by Sec. 96, Ch. 120, Laws of 1974.

80-2312. Repealed.**Repeal**

Section 80-2312 (Sec. 5, Ch. 255, L. 1967; Sec. 2, Ch. 275, L. 1969; Sec. 59, Ch. 120,

L. 1974), relating to transfers to Boulder river school and hospital was repealed by Sec. 35, Ch. 468, Laws of 1975.

CHAPTER 24—WARM SPRINGS STATE HOSPITAL AND MENTAL HEALTH CENTERS

Section

- 80-2401. Location and function of hospital.
- 80-2402. Qualifications of superintendent.
- 80-2404. [Transferred.]
- 80-2412. Interstate compact on mental health enacted—text.
- 80-2413. Legislative intent.
- 80-2414. Duties of department of institutions.

80-2401. Location and function of hospital. The institution located at Warm Springs is the "Warm Springs state hospital." The functions of the state hospital are the care and treatment of mentally ill persons.

History: En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967; amd. Sec. 3, Ch. 90, L. 1974; amd. Sec. 60, Ch. 120, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 90 and once by Ch. 120. Neither amendatory act mentioned or

entirely incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital."

Chapter 90, Laws of 1974, deleted "and alcoholics" from the end of the second sentence; and made a minor change in punctuation.

Chapter 120, Laws of 1974, deleted "The Warm Springs state hospital is in the division of mental hygiene of the department of institutions" from the end of the section; and made minor changes in phraseology.

80-2401.1. Repealed.

Repeal

Section 80-2401.1 (Sec. 1, Ch. 246, L. 1967; Sec. 61, Ch. 120, L. 1974), relating

to definition of terms, was repealed by Sec. 7, Ch. 509, Laws of 1975.

80-2402. Qualifications of superintendent. The superintendent of the Warm Springs state hospital shall be either: (1) a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry and a minimum of one (1) year full-time experience in hospital administration, or (2) a person with a master's degree in hospital administration; and shall have a minimum of three (3) years' full-time experience in hospital administration.

History: En. Sec. 68, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967; amd. Sec. 62, Ch. 120, L. 1974; amd. Sec. 1, Ch. 338, L. 1974; amd. Sec. 1, Ch. 428, L. 1975.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" in the first sentence.

Chapter 120, Laws of 1974, deleted a first sentence making the superintendent of Warm Springs state hospital the supervisor of the division of mental hygiene; and made minor changes in phraseology.

Chapter 338, Laws of 1974, added to the present first sentence "or a hospital administrator with a master's degree and a minimum of three (3) years' full-time experience in hospital administration"; and added the second sentence.

The 1975 amendment inserted "either: (1)"; inserted "and a minimum of one (1) year full-time experience in hospital administration"; substituted "or (2) a person with a master's degree in hospital administration" for "or a hospital administrator with a master's degree"; inserted "shall have" before "a minimum of three"; and deleted the former second sentence which read "The qualifications of the superintendent serving on the effective date of this act shall be considered sufficient to meet the requirements of this section."

Effective Date

Section 2 of Ch. 338, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

80-2403. Repealed.

Repeal

Section 80-2403 (Sec. 69, Ch. 199, L. 1965; Sec. 2, Ch. 246, L. 1967; amd. Sec. 63, Ch. 120, L. 1974), relating to func-

tions of the department of mental health, was repealed by Sec. 7, Ch. 509, Laws of 1975.

80-2404. [Transferred.]

Compiler's Notes

Section 2, Ch. 90, Laws of 1974 re-numbered this section as sec. 80-1705.

80-2405 to 80-2411. Repealed.**Repeal**

Sections 80-2405 to 80-2411 (Secs. 3 to 7, Ch. 246, L. 1967; Secs. 1, 2, Ch. 255, L. 1967; Secs. 64 to 69, Ch. 120, L. 1974; Sec.

1, Ch. 372, L. 1974), relating to public mental health programs, including mental health centers, were repealed by Sec. 7, Ch. 509, Laws of 1975.

80-2412. Interstate compact on mental health enacted—text. The Interstate Compact on Mental Health as contained herein is hereby enacted into law and entered into by this state with all other jurisdiction legally joining therein in the form substantially as follows:

The contracting states solemnly agree, that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

- (1) "sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;
- (2) "receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent;
- (3) "institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;
- (4) "patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact;
- (5) "aftercare" means care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release;
- (6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others, or of the community;
- (7) "mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is in-

capable of managing himself and his affairs but shall not include mental illness as defined herein; and

(8) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(2) The provisions of subsection (1) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(3) No state shall be obliged to receive any patient pursuant to the provisions of subsection (2) of this article unless the sending state gives advance notice of its intention to send the patient, furnishes all available medical and other pertinent records concerning the patient, gives the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all

reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(2) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact without interference.

Article VII

(1) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(3) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

(4) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(5) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII

(1) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in subsection (1) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(1) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but such patient shall with all expedition be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(1) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of a sending or receiving state. The compact administrator or his duly designated representative shall be

the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(2) The compact administrators of the respective party states shall have power to promulgate reasonable rules to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(1) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect 1 year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(2) Withdrawal from any agreement permitted by Article VII (2) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

(1) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(2) The director of the department of institutions, hereafter called "the director", shall be the compact administrator and shall have the power to make any rules necessary for the administration of this article. The

director shall cooperate with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the Interstate Compact on Mental Health or of any supplementary agreement or agreements entered into by this state thereunder.

(3) The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

(4) The department of institutions in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the general assembly shall appropriate such sums necessary therefor.

(5) The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval the court shall hold such hearings as it considers appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

(6) Duly authenticated copies of the article shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States and the Council of State Governments.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977.

Title of Act

An act relating to the interstate compact on mental health authorizing the state of Montana to enter into a compact with any of the United States, its territories and possessions, for the treatment of mentally ill and mentally deficient; providing for a "compact administrator"; and providing an effective date.

Amendments

The 1977 amendment redesignated all subsection designations in each article from letters to numbers; deleted "and reg-

ulations" after "rules" in subsection (2) of article X; inserted "is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance" in the second sentence of subsection (1) of article XIV; deleted "and regulations" after "rules" in the first sentence of subsection (2) of article XIV; and made minor changes in phraseology, punctuation and style.

Effective Date

Section 2 of Ch. 112, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

80-2413. Legislative intent. (1) It is the intent of the legislature that geriatric patients at Warm Springs state hospital and geriatric residents of the state, who may in the future be placed at Warm Springs state hospital and who do not need intensive psychiatric care, receive care and treatment in nursing homes located in community settings.

(2) It is the further intent of the legislature that nursing homes providing such care and treatment be located regionally so that the residents may be near their homes and families.

(3) It is the further intent of the legislature that these nursing homes shall be located in communities with:

(a) a labor pool large enough to ensure adequate and qualified staffing;

(b) sufficient medical facilities and medical professionals to provide necessary medical services; and

(c) if possible, an institution or institutions of higher learning with educational programs in disciplines with relevance to the problems of aging.

History: En. 80-2413 by Sec. 1, Ch. 523, L. 1975.

Compiler's Notes

Section 2 of Ch. 523, Laws 1975 read
“(1) There is a nursing home location committee.

“(2) The committee is composed of nine (9) members to be selected as follows:

“(a) one (1) person, with experience in the field of geriatrics appointed by the governor, from each of the five (5) mental health regions;

“(b) one (1) representative of nursing home administrators within the state, appointed by the governor;

“(c) one (1) medical doctor licensed to practice in the state, appointed by the governor; and

“(d) the director of institutions and the director of health and environmental sciences or their designees.

“(3) The committee is a quasi-judicial board for the purposes of subsections (4), (5), (6), (7) and (8) of section 82A-112.

“(4) The committee is allocated to the department of institutions for administrative purposes only as provided in section 82A-108.”

Section 3 of Ch. 523, Laws 1975 read
“(1) The nursing home location committee shall select communities for the location of state-owned nursing homes authorized by legislative appropriation.

“(2) In selecting communities, the committee shall adhere to the principles enunciated in section 80-2413.

“(3) In addition, the committee may consider donation of land to the state by a private individual or a local government for the purpose of establishing a nursing home under this act.

“(4) The committee shall make the necessary selection of communities for the location of nursing homes authorized by the Forty-fourth Legislature prior to September 1, 1975.”

Section 5 of Ch. 523, Laws 1975 provided sections 2 and 3 of Ch. 523 are repealed on June 30, 1977.

Title of Act

An act to establish a nursing home location committee, define its duties, and the duties of the department of institutions in relation to the committee; provide an expiration date; and provide an immediate effective date.

80-2414. Duties of department of institutions. The department of institutions:

(1) shall contract with nonprofit corporations, which demonstrate expertise in and the capability of providing rehabilitative and restorative programs for aged citizens, for the operation and management of nursing homes established under this act;

(2) shall ensure that nursing homes established and operated under this act are in compliance with all applicable federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) shall provide that geriatric residents of Warm Springs state hospital have first priority for admission to nursing homes established under this act;

(5) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations,

or federal, state and local government agencies for the purposes of establishing and operating nursing homes under this act.

History: En. 80-2414 by Sec. 4, Ch. 523, L. 1975.

Expiration Date

Section 5 of Ch. 523, Laws of 1975 read "Sections 2 and 3 of this act are repealed on June 30, 1977."

Effective Date

Section 6 of Ch. 523, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 29, 1975.

CHAPTER 25—MONTANA CENTER FOR THE AGED

Section

80-2501. Location and function of center.

80-2502. Transfer of patients to and from hospitals—notice to relatives.

80-2501. Location and function of center. The institution located at Lewistown is the "Montana Center for the Aged." The primary function of the center is the care and treatment of persons who have been admitted to Warm Springs state hospital and subsequently transferred to the center.

History: En. Sec. 71, Ch. 199, L. 1965; amd. Sec. 70, Ch. 120, L. 1974; amd. Sec. 36, Ch. 466, L. 1975.

Amendments

The 1974 amendment substituted "Warm Springs state hospital" for "state hospital" and substituted "chapter" for "act."

The 1975 amendment deleted "senile" before "persons" in the second sentence; and deleted a last sentence reading "as used in this chapter 'senility' means mental illness resulting from the aging process."

Separability Clause

Section 37 of Ch. 466, Laws 1975 read "If any provision of this act or the appli-

cation thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Repealing Clause

Section 38 of Ch. 466, Laws 1975 read "Sections 38-107, 38-108, 38-109, 38-112, 38-113, 38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204, 38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2, 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403, 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408, 38-408.1, 38-502, 38-503, 38-504, 38-505, and 64-112, R. C. M. 1947, are repealed."

80-2502. Transfer of patients to and from hospitals—notice to relatives. With the approval of the department of institutions, the Warm Springs state hospital may transfer a patient to the center or from the center to the state hospital. With the approval of the department the state hospital may transfer a patient residing at the center to Galen state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall notify the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 72, Ch. 199, L. 1965; amd. Sec. 71, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted "Warm Springs state hospital" for "state hos-

pital"; substituted "department" for "department of institutions" in two places; substituted "Galen state hospital" for "state pulmonary disease hospital"; and made minor changes in phraseology and punctuation.

CHAPTER 26—MENTAL RETARDATION—DEVELOPMENTAL DISABILITIES

Section

80-2604. Primary function of Boulder river school and hospital and Eastmont training center.

80-2601 to 80-2603. Repealed.**Repeal**

Sections 80-2601 to 80-2603 (Secs. 1 to 3, Ch. 111, L. 1971), relating to the estab-

lishment of the division of mental retardation, were repealed by Sec. 96, Ch. 120, Laws of 1974.

80-2604. Primary function of Boulder river school and hospital and Eastmont training center. The primary functions of the Boulder river school and hospital and the Eastmont training center are the care, treatment, training, education, and necessary medical treatment of mentally retarded persons.

History: En. Sec. 4, Ch. 111, L. 1971; amd. Sec. 72, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted

"Boulder river school and hospital and Eastmont training center" for "institutions in division" in the caption; and made minor changes in phraseology and punctuation.

80-2605 to 80-2610. Repealed.**Repeal**

Sections 80-2605 to 80-2610 (Secs. 5, 6, Ch. 111, L. 1971; Secs. 1 to 4, Ch. 165, L. 1971; Secs. 74 to 76, Ch. 120, L. 1974),

relating to establishment of community-centered programs for the mentally retarded, were repealed by Sec. 11, Ch. 239, Laws of 1975.

80-2611. [Transferred.]**Compiler's Notes**

Section 10, Ch. 239, Laws of 1975, renumbered this section as sec. 71-2401.

80-2612 to 80-2615. [Transferred.]**Compiler's Notes**

Sections 1 to 4, Ch. 239, Laws of 1975

renumbered these sections as secs. 71-2402 to 71-2405.

80-2616 to 80-2618. Repealed.**Repeal**

Sections 80-2616 to 80-2618 (Secs. 6 to 8, Ch. 325, L. 1974), relating to state council of developmental disability serv-

ices and facilities, structure and funding, were repealed by Sec. 11, Ch. 239, Laws of 1975.

80-2619. [Transferred.]**Compiler's Notes**

Section 7, Ch. 239, Laws of 1975, renumbered this section as sec. 71-2408.

80-2620. Repealed.**Repeal**

Section 80-2620 (Sec. 10, Ch. 325, L. 1974), relating to reduction of funding

for developmental disabilities by counties, was repealed by Sec. 11, Ch. 239, Laws of 1975.

80-2621 to 80-2625. [Transferred.]

Compiler's Notes numbered these sections as secs. 71-2409
 Section 10, Ch. 239, Laws of 1975, re- to 71-2413.

CHAPTER 27—ALCOHOL AND DRUG DEPENDENCE**Section**

- 80-2701. Legislative purpose.
- 80-2702. Duties of department—department authorized to accept gifts—enter into contracts—acquire and dispose of property.
- 80-2703. Administration of federal program.
- 80-2708. Declaration of policy.
- 80-2709. Definitions.
- 80-2710. Powers of department.
- 80-2711. Duties of department.
- 80-2712. Comprehensive program for treatment.
- 80-2713. Facility standards—inspections—approvals.
- 80-2714. Acceptance for treatment—rules.
- 80-2715. Voluntary treatment of alcoholics.
- 80-2716. Treatment and services for intoxicated persons and persons incapacitated by alcohol.
- 80-2717. Emergency commitment of intoxicated persons.
- 80-2718. Involuntary commitment of alcoholics.
- 80-2719. Records of alcoholics and intoxicated persons.
- 80-2720. Visitation and communication of patients.
- 80-2721. Application of Administrative Procedure Act.
- 80-2722. Departmental reports to legislature.
- 80-2723. Criminal laws limitations.
- 80-2724. Public intoxication not criminal offense.
- 80-2725. State-approved alcoholism programs utilizing funding generated by taxation on alcoholic beverages.

80-2701. Legislative purpose. It is the purpose of this act and the policy of this state to recognize alcoholism and drug dependence as problems affecting the health, safety, morals, economy, and general welfare of this state; to recognize alcoholism and drug dependence as problems subject to treatment; and to recognize the sufferer of alcoholism, drug dependence, or both as worthy of treatment and rehabilitation. It is the intent of this act to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the problems of alcoholism and drug dependence and utilized in implementing programs for the control and treatment of these problems.

History: En. Sec. 1, Ch. 303, L. 1969;
 Sec. 69-6201, R. C. M. 1947; redes. 80-2701
 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 49,
 Ch. 37, L. 1977.

Amendments

The 1977 amendment substituted "alcoholism" for "alcohol" throughout the section; and made a minor change in punctuation.

80-2702. Duties of department—department authorized to accept gifts—enter into contracts—acquire and dispose of property. (1) The department of institutions, hereafter referred to as department in this chapter, shall:

(a) plan, promote, and assist in the support of alcoholism and drug dependence prevention, treatment, and control programs;

(b) conduct, sponsor, and support research, investigations, and studies, including evaluation, of all phases of alcoholism and drug dependence;

(c) assist the development of educational and training programs relative to alcoholism and drug dependence and carry on programs to assist the public and technical and professional groups in becoming fully informed about alcoholism and drug dependence;

(d) promote, develop, and assist, financially and otherwise, alcoholism and drug dependence programs administered by other state agencies, local government agencies, and private nonprofit organizations and agencies; and

(e) encourage and promote effective use of facilities, resources, and funds in the planning and conduct of programs and activities for prevention, treatment, and control of alcoholism and drug dependence and, in this respect, cooperate with and utilize to the maximum possible extent the resources and services of federal, state, and local agencies.

(2) To carry out this act, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts; and

(c) acquire and dispose of property.

History: En. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; Sec. 69-6203, R. C. M. 1947; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977.

Amendments

The 1974 amendment substituted "department" for "commission" in the caption; substituted "The department of health and environmental sciences, hereafter referred to as department in this chapter, shall" for "The commission shall"

at the beginning of the section; and made minor changes in phraseology and punctuation.

The 1975 amendment renumbered this section; and substituted "department of institutions" for "department of health and environmental sciences" at the beginning of subsection (1).

The 1977 amendment substituted "alcoholism" for "alcohol" throughout the section; and made minor changes in phraseology, punctuation and style.

80-2703. Administration of federal program. The department of institutions is hereby designated the single state agency for the administration of federal programs under:

(1) the Drug Abuse Office and Treatment Act of 1972, Public Law 92-255 as amended, 21 U.S.C. section 1176; and

(2) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Public Law 91-616 as amended, 42 U.S.C. section 4573.

History: En. 80-2703 by Sec. 4, Ch. 280, L. 1975.

Compiler's Notes

Section 5 of Ch. 280, Laws of 1975 read "The provisions of sections 82A-116 through 82A-122 are applicable to this act."

Title of Act

An act to consolidate all functions of state government dealing with addictive diseases in the department of institutions; amending and renumbering sections 69-6203, 69-6212 and 69-6225; renumbering sections 69-6201, 69-6204 through 69-6207, 69-6211, 69-6213 through 69-6224; and amending sections 82A-601.1 and 82A-801.1.

80-2704 to 80-2707. [Transferred from 69-6204 to 69-6207.]

Compiler's Notes

These sections were originally numbered 69-6204 to 69-6207. Section 6, Chapter 280, Laws of 1975 renumbered them to appear in this title. Since there has been no

change in text, the sections are not reprinted here but may be found in bound Volume Four, Part One, as secs. 69-6204 to 69-6207.

80-2708. Declaration of policy. It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

History: En. 69-6211 by Sec. 1, Ch. 302, L. 1974; redes. 80-2708 by Sec. 6, Ch. 280, L. 1975.

80-2709. Definitions. For purposes of this chapter :

(1) "alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted ;

(2) "approved private treatment facility" means a private agency meeting the standards prescribed in section 80-2713(1) and approved under section 80-2713 ;

(3) "approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this chapter through a contract with the department and approved under section 80-2713 ;

(4) "department" means the department of institutions provided for in section 82A-801, R.C.M. 1947 ;

(5) "incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment ;

(6) "incompetent person" means a person who has been adjudged incompetent by the district court ;

(7) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol ;

(8) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, intoxicated persons, and family members ;

(9) "family member", is the spouse, mother, father, child, or member of the household of an alcoholic whose life has been affected by the actions of the alcoholic and may require treatment ;

(10) "prevention" has meaning on four levels ; these are :

(a) education to provide information to the school children and general public relating to alcohol dependence and alcoholism, treatment, and rehabilitative services and to reduce the consequences of life experiences acquired by contact with an alcoholic ;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred ;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

History: En. 69-6212 by Sec. 2, Ch. 302, L. 1974; amd. and redes. 80-2709 by Sec. 2, Ch. 280, L. 1975; amd. Sec. 1, Ch. 414, L. 1977.

Amendments

The 1975 amendment renumbered this section; and substituted "department of institutions provided for in section 80A-801"

in subsection (4) for "department of health and environmental sciences provided for in section 82A-601."

The 1977 amendment substituted "80-2713" throughout the section for "69-6216"; added "family members" at the end of subdivision (8); added subdivisions (9) and (10); and made minor changes in phraseology, punctuation and style.

80-2710. Powers of department. The department may:

(1) plan, establish, and maintain treatment programs as necessary or desirable;

(2) coordinate its activities and cooperate with alcoholism programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs;

(3) do other acts and things necessary or convenient to execute the authority expressly granted to it; and

(4) provide treatment facilities for alcoholics, intoxicated persons, and family members.

History: En. 69-6213 by Sec. 3, Ch. 302, L. 1974; redes. 80-2710 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 2, Ch. 414, L. 1977.

Amendments

The 1977 amendment added "family members" at the end of subdivision (4); and made minor changes in phraseology, punctuation and style.

80-2711. Duties of department. The department shall:

(1) develop, encourage, and foster state-wide, regional, and local plans and programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons in co-operation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) co-ordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and treatment of alcoholics and intoxicated persons;

(3) co-operate with the department of institutions and board of pardons in establishing and conducting programs to provide treatment for alcoholics and intoxicated persons in or on parole from penal institutions;

(4) co-operate with the department of education, the superintendent of public instruction, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated

persons, and preparing curriculum materials thereon for use at all levels of education;

(5) prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol;

(6) develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol;

(7) organize and foster training programs for all persons engaged in treatment of alcoholics and intoxicated persons;

(8) sponsor and encourage research into the causes and nature of alcoholism and treatment of alcoholics and intoxicated persons, and serve as a clearinghouse for information relating to alcoholism;

(9) specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and intoxicated persons;

(12) assist in the development of, and co-operate with, alcohol education and treatment programs for employees of state and local governments and businesses and industries in the state;

(13) utilize the support and assistance of interested persons in the community, particularly recovered alcoholics, to encourage alcoholics voluntarily to undergo treatment

(14) co-operate with the department of justice in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) encourage all health and disability insurance programs to include alcoholism as a covered illness; and

(17) submit to the governor an annual report covering the activities of the department.

History: En. 69-6214 by Sec. 4, Ch. 302,
L. 1974; redes. 80-2711 by Sec. 6, Ch. 280,
L. 1975.

80-2712. Comprehensive program for treatment. (1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons, and family members.

(2) The program shall include :

- (a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital ;
- (b) inpatient treatment ;
- (c) intermediate treatment ; and
- (d) outpatient and followup treatment.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under sections 80-2713 through 80-2718. Treatment may not be provided at a correctional institution except for inmates.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

History: En. 69-6215 by Sec. 5, Ch. 302, L. 1974; redes. 80-2712 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 3, Ch. 414, L. 1977.

Amendments

The 1977 amendment added "family

members" at the end of subsection (1); substituted "80-2715 through 80-2718" at the end of the first sentence of subsection (3) for "69-6218 to 69-6221"; and made minor changes in phraseology, punctuation and style.

80-2713. Facility standards — inspections — approvals. (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility, and fix the fees to be charged for the required inspections. The standards may concern only the health standards to be met and standards of treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, shall be removed from the list of approved treatment facilities.

(5) The department, after holding a hearing in accordance with the Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval, or refuse to grant an approval, for failure to meet its standards.

(6) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(7) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the de-

partment or which the department has reasonable cause to believe is operating in violation of this act.

History: En. 69-6216 by Sec. 6, Ch. 302, L. 1974; redes. 80-2713 by Sec. 6, Ch. 280, L. 1975.

80-2714. Acceptance for treatment—rules. The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons, and family members. In adopting the rules the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each person.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

History: En. 69-6217 by Sec. 7, Ch. 302, L. 1974; redes. 80-2714 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 4, Ch. 414, L. 1977.

Amendments

The 1977 amendment added "family

members" to the end of the first sentence; substituted "person" at the end of subdivision (4) for "patient"; and made minor changes in phraseology, punctuation and style.

80-2715. Voluntary treatment of alcoholics. (1) An alcoholic may apply for voluntary treatment directly to an approved public treatment facility. If the proposed patient is a minor or an incompetent person, he, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(3) If a patient receiving in-patient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of the treatment facility that the patient is an alcoholic who requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall

make reasonable provisions for his transportation to another facility or to his home. If he has no home he shall be assisted in obtaining shelter. If he is a minor or an incompetent person the request for discharge from an in-patient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he was the original applicant.

History: En. 69-6218 by Sec. 8, Ch. 302,
L. 1974; redes. 80-2715 by Sec. 6, Ch. 280,
L. 1975.

80-2716. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (1) once he is no longer incapacitated by alcohol, or (2) if he remains incapacitated by alcohol for more than forty-eight (48) hours after admission as a patient, unless he is committed under section 80-2717. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility, may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be notified as promptly as possible. If an

adult patient who is not incapacitated requests that there be no notification, his request shall be respected.

History: En. 69-6219 by Sec. 9, Ch. 302, L. 1974; redes. 80-2716 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 5, Ch. 414, L. 1977.

Amendments

The 1977 amendment substituted "80-2717" at the end of the first sentence of subsection (4) for "69-6220."

80-2717. Emergency commitment of intoxicated persons. (1) An intoxicated person who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed or who is incapacitated by alcohol may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for commitment under this section directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within 2 days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be detained at the facility to which he was admitted or transferred to another appropriate public or private treatment facility until discharged under subsection (5).

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than 5 days. If a petition for involuntary commitment under 80-2718 has been filed within the 5 days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined but no longer than 10 days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate and a written explanation of the person's right to counsel shall be given to the person within 24 hours after commitment by the department. The department shall provide a reasonable opportunity for the person to consult counsel.

History: En. 69-6220 by Sec. 10, Ch. 302, L. 1974; redes. 80-2717 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 51, Ch. 37, L. 1977; amd. Sec. 6, Ch. 414, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 37 and once by Ch. 414. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 37, Laws of 1977, substituted "detained" for "retained" near the beginning of the second sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 414, Laws of 1977, substituted "80-2718" in the third sentence of subsection (5) for "69-6221."

80-2718. Involuntary commitment of alcoholics. (1) A person may be committed to the custody of the department of institutions by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he (a) has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another; or (b) is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two (2) days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than ten (10) days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, a parent or his legal guardian if he is a minor, the administrator in charge of the approved public treatment facility to which he has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall have a right to have a licensed physician of his own choosing examine him and testify on his behalf, and if he has no funds with which to pay such physician, the reasonable costs of one such examination and testimony shall be paid by the county. The person shall be present unless the court believes that his presence is likely to be injurious to him; he shall be advised of his right to counsel and, if he is unable to hire his own counsel, the court shall appoint an attorney to represent him at the expense of the county. The court shall examine the person in open court, or if advisable, shall examine the person in chambers. If he refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing

him to the department of institutions for a period of not more than five (5) days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department of institutions, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department of institutions. It may not order commitment of a person unless it determines that the department of institutions is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the custody of the department of institutions for treatment for a period of thirty (30) days unless sooner discharged. At the end of the thirty (30) day period, he shall be discharged automatically unless the department of institutions before expiration of the period obtains a court order from the district court of the committing district for his recommitment upon the grounds set forth in subsection (1) for a further period of ninety (90) days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department of institutions shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department of institutions before the end of the ninety (90) day period shall be discharged at the expiration of that period unless the department of institutions, before expiration of the period, obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed ninety (90) days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two (2) recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsections (5) or (6), the court shall fix a date for hearing no later than ten (10) days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department of institutions for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of

infliction of physical harm upon another, that he is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court, if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or his parent, sibling, adult child, or guardian to accept the patient for treatment, the department of institutions may transfer him to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which person to be committed resides or is present.

History: En. 69-6221 by Sec. 11, Ch. 302,
L. 1974; redes. 80-2718 by Sec. 6, Ch. 280,
L. 1975.

80-2719. Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available information from patients' records for purposes of research into the causes and treatment of alcoholism. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

History: En. 69-6222 by Sec. 12, Ch. 302,
L. 1974; redes. 80-2719 by Sec. 6, Ch. 280,
L. 1975.

80-2720. Visitation and communication of patients. (1) Subject to reasonable rules regarding hours of visitation which the department may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

History: En. 69-6223 by Sec. 13, Ch. 302,
L. 1974; redes. 80-2720 by Sec. 6, Ch. 280,
L. 1975.

80-2721. Application of Administrative Procedure Act. The Administrative Procedure Act applies to and governs all administrative actions taken under this act.

History: En. 69-6224 by Sec. 14, Ch. 302,
L. 1974; redes. 80-2721 by Sec. 6, Ch. 280,
L. 1975.

80-2722. Departmental reports to legislature. The department shall achieve full implementation of the provisions of the act, as set forth in this chapter and related sections, no later than January 1, 1976. A progress report on the implementation shall be made to the 1975 legislative session. Thereafter the department shall report, to each legislative session, on the status of the implemented act. This report, or any part thereof, may be included as the department's state plan for alcohol abuse and alcoholism.

History: En. 69-6224 by Sec. 19, Ch. 302,
L. 1974; amd. and redes. 80-2722 by Sec. 3,
Ch. 280, L. 1975.

the beginning of the section; and substituted "department" for "departments" at the beginning of the third sentence.

Amendments

The 1975 amendment renumbered this section; deleted "and the department of institutions" after "The department" at

Repealing Clause

Section 20 of Ch. 302, Laws 1974 read "Sections 4-164 and 69-6202, R. C. M. 1947, are repealed."

80-2723. Criminal laws limitations. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) Nothing in this section affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

History: En. 80-2723 by Sec. 2, Ch. 403,
L. 1975.

80-2724. Public intoxication not criminal offense. (1) A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition, but may be detained by a peace officer for the person's own protection. A

peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by section 80-2716.

(2) If none of the alternatives in section 80-2716 is reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to himself or others.

(3) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions.

History: En. 80-2724 by Sec. 3, Ch. 403,
L. 1975.

Repealing Clause

Section 4 of Ch. 403, Laws of 1975 read
"Section 94-8-105 is repealed."

80-2725. State-approved alcoholism programs utilizing funding generated by taxation on alcoholic beverages. (1) Revenue generated by 4-1-401 and 4-1-404 for the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved alcoholism programs, certified alcoholism counselors, licensed physicians, and licensed hospitals; and

(b) as grants to persons operating state-approved alcoholism programs.

(2) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) deduct from total project costs to determine the net costs on which the grantor's share of the costs is based.

(6) Revenue generated by 4-1-401 and 4-1-404 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the division shall be returned to the state's general fund within 30 days after the close of each fiscal year.

History: En. 80-2725 by Sec. 7, Ch. 414, L. 1977.

Title of Act

An act to amend certain provisions of the Uniform Alcoholism Intoxication Act; increasing the tax on alcoholic beverages

to create funding for authorized programs; establishing certain requirements for programs receiving state funding support; amending sections 4-1-401, 4-1-404, 80-2709, 80-2710, 80-2712, 80-2714, 80-2716, and 80-2717, R. C. M. 1947.

CHAPTER 28—COMMUNITY MENTAL HEALTH CENTERS

Section

- 80-2801. Definitions.
- 80-2802. Duties of department.
- 80-2803. Departmental contracts with mental health corporations.
- 80-2804. Mental health corporations.
- 80-2805. Continuation of services.
- 80-2806. Availability of services.

80-2801. Definitions. As used in this act:

(1) "Public mental health facility" means any public service or group of services offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) "Community comprehensive mental health center" means a facility, not necessarily encompassed within one (1) building, offering at least the following six (6) basic mental health services to the public:

- (a) twenty-four (24) hour inpatient care;
- (b) part-time hospitalization;
- (c) outpatient service;
- (d) emergency service;
- (e) consultation and education in mental health;
- (f) precare and aftercare.

(3) "Mental health clinic" means an outpatient facility offering mental health care to the public.

(4) "Department" means the department of institutions.

History: En. 80-2801 by Sec. 1, Ch. 509, L. 1975.

Title of Act

An act to recodify and revise the pres-

ent code governing formulation of comprehensive health centers; repealing sections 80-2401.1, 80-2403, 80-2405, 80-2406, 80-2407, 80-2407.1, 80-2408, 80-2409, 80-2410, and 80-2411, R. C. M. 1947.

80-2802. Duties of department. The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. Such means shall be

utilized to initiate and operate these services in cooperation with local agencies as established under this act.

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

(4) collect and disseminate information relating to mental health;

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, and consultative and educational services;

(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients into Warm Springs state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(8) establish standards for public mental health facilities; and

(9) evaluate performance of public mental health facilities in compliance with federal and state standards.

History: En. 80-2802 by Sec. 2, Ch. 509, L. 1975; amd. Sec. 52, Ch. 37, L. 1977.

Repealing Clause

Section 53 of Ch. 37, Laws 1977 read "Sections 38-210, 71-101, 71-107, 71-118, and 71-233.5, R. C. M. 1947, are repealed."

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

80-2803. Departmental contracts with mental health corporations.

(1) The department may enter into contracts with regional mental health corporations for the purposes of the prevention, diagnosis, and treatment of mental illness. Mental health corporations may be provided for directly by state agencies or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules adopted by the department.

(2) State funds specifically appropriated for regional mental health service contracts shall not exceed fifty per cent (50%) of the budget approved by the department of institutions. Furthermore, the department may establish a system whereby funds appropriated to the Warm Springs state hospital for patient care may be transferred to the community mental health services used to implement this act. If the patient load at Warm Springs state hospital is reduced and these patients become patients of a community mental health service, a portion of the funds appropriated for Warm Springs state hospital may be used to supplement the regional budget. However, if those patients are returned to Warm Springs state hospital from the community mental health services, these funds may revert back to the Warm Springs state hospital. The department shall establish rules to implement this provision.

History: En. 80-2803 by Sec. 3, Ch. 509, L. 1975.

80-2804. Mental health corporations. (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under the Federal Community Mental Health Centers Act.

(2) The mental health regions shall establish themselves under Title 15, chapter 23, R. C. M. 1947. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These non-profit corporations shall not be considered agencies of the department or the state of Montana, however, they may retain and enter into retirement programs as established under Title 68, the Public Employees Retirement Act. Upon the establishment of the mental health regions, the county commissioners in each of the various counties in the region shall designate a person from their respective county to serve as a representative of the county on the regional mental health corporation board. The board shall be established under guidelines adopted by the bylaws of the corporation. All appointments to the board shall be for terms of two (2) years, and the department shall be notified in writing of all appointments.

(3) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health service within the limits of this section;

(d) receipt and administration of moneys and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this act shall be used to carry out the purposes of this act;

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties, when assigned by the board.

(5) The board of mental health shall submit, prior to June 10 of each year, to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county

commissioners includes in the county budget the county's proportionate share of the regional boards budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with section 80-2804 (3) (d).

History: En. 80-2804 by Sec. 4, Ch. 509,
L. 1975.

80-2805. Continuation of services. Nothing in this act shall be construed to prevent the continuation of existing mental health services or facilities.

History: En. 80-2805 by Sec. 5, Ch. 509,
L. 1975.

80-2806. Availability of services. The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964.

History: En. 80-2806 by Sec. 6, Ch. 509,
L. 1975; amd. Sec. 17, Ch. 38, L. 1977.

Amendments

The 1977 amendment inserted "religion"; and made a minor change in punctuation.

Repealing Clauses

Section 7 of Ch. 509, Laws of 1975 read

"Sections 80-2401.1, 80-2403, 80-2405, 80-2406, 80-2407, 80-2407.1, 80-2408, 80-2409, 80-2410, and 80-2411, R. C. M. 1947, are repealed."

Section 18 of Ch. 38, Laws 1977 read "Section 64-211, R. C. M. 1947, is repealed."

TITLE 81—STATE LANDS

Chapter

1. Department of state lands—board of land commissioners, 81-102 to 81-108.
3. Selection—classification, appraisal and exchange of lands, 81-301, 81-302, 81-304, 81-307.
4. Leasing of agricultural lands—grazing lands and city and town lots, 81-402, 81-404, 81-405, 81-407, 81-407.1, 81-408, 81-412 to 81-416, 81-418, 81-419, 81-421 to 81-424, 81-426, 81-428, 81-433, 81-436.
5. Coal mining leases and permits, 81-501 to 81-503, 81-506, 81-508, 81-510, 81-511.
6. Prospecting permits and mining leases, 81-601 to 81-608, 81-611 to 81-613, 81-616.
7. Leases and permits for deposits of stone, gravel, sand and other minerals, 81-701, 81-702, 81-704.
8. Granting of easements for public purposes, 81-801 to 81-803.
9. Sale of state lands, 81-901, 81-902, 81-905, 81-907.1, 81-908, 81-910, 81-912, 81-915, 81-917, 81-919, 81-921, 81-923, 81-924, 81-926 to 81-928, 81-930, 81-932.
11. State lands and investments—miscellaneous provisions, 81-1101 to 81-1103, 81-1110, 81-1115 to 81-1122.
13. Reimbursement of federal government for certain emergency conservation work, Repealed—Section 116, Chapter 428, Laws of 1973.
14. State forests—timber sales—firewardens, 81-1401, 81-1404, 81-1406, 81-1408, 81-1409, 81-1411 to 81-1413, 81-1415.
16. Timber sales—general provisions, 81-1601.
17. Oil and gas on state lands—disposal of, 81-1702 to 81-1702.2, 81-1704 to 81-1706, 81-1712, 81-1716 to 81-1718, 81-1720, 81-1726, 81-1728 to 81-1731.
20. Water for state lands, 81-2018.
22. Exchange of timbered, cut or burned over lands, 81-2201 to 81-2205.
23. Certain stream and lake beds and islands property of state, 81-2302, 81-2303, 81-2305.
24. Development of state land resources, 81-2401 to 81-2408.
25. Preservation of antiquities, 81-2501 to 81-2514.
26. Lease of geothermal resources, 81-2601 to 81-2613.
27. Natural areas act, 81-2701 to 81-2713.

CHAPTER 1—DEPARTMENT OF STATE LANDS— BOARD OF LAND COMMISSIONERS

Section

- | | |
|-----------|--|
| 81-102. | Definitions. |
| 81-103. | Powers and duties of board. |
| 81-103.1. | Commissioners authorized to lease lands. |
| 81-104. | Meetings of board. |
| 81-105. | Powers and duties of the department. |
| 81-106. | Board to correct errors. |
| 81-107. | Money paid by mistake to be refunded. |
| 81-108. | Fees. |

81-101. (1805.1) Repealed.

Repeal

Section 81-101 (Sec. 1, Ch. 60, L. 1927; Sec. 40, Ch. 100, L. 1973), creating the de-

partment of state lands and investments, was repealed by Sec. 116, Ch. 428, Laws of 1973.

81-102. (1805.2) Definitions. Unless the context requires otherwise, in this title:

(1) "Department" means the department of state lands provided for in title 82A, chapter 11.

(2) "Board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in section 82A-1104.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent, lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution, or lands acquired through foreclosure of any investments purchased under the provisions of 79-310.

History: En. Sec. 2, Ch. 60, L. 1927; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973; amd. Sec. 2, Ch. 203, L. 1977.

Amendments

The 1973 amendment inserted "Unless the context requires otherwise" at the beginning of the section; numbered the subdivisions; deleted "and investments" from the titles of the department and commis-

sioner in subdivisions (1) and (3); inserted the constitutional and statutory references at the ends of subdivisions (1), (2) and (3); deleted a clause defining "assistant commissioner"; and made minor changes in phraseology.

The 1977 amendment added "or lands acquired through foreclosure of any investments purchased under the provisions of 79-310" at the end of the section; and made a minor change in phraseology.

81-103. (1805.3) Powers and duties of board. The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands, and subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and the board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state. The board shall manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

History: En. Sec. 3, Ch. 60, L. 1927; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973.

extent that the amendatory enactments are conflicting, the provisions of Ch. 428, the later enactment, are set out above by the compiler.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 67 and once by Ch. 428. To the

Amendments

The 1969 amendment inserted the third sentence providing for management of

state-owned lands under the multiple-use concept.

Chapter 67, Laws of 1973, added the auditor to the board.

Chapter 428, Laws of 1973, deleted "consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution" and "shall be the governing board of the department of state lands and investments" following "board" at the beginning of the first sentence; inserted "subject to the investment authority of the board of investments" in the first

sentence; deleted a final sentence saving inherent powers of the board; and made minor changes in style, phraseology and punctuation.

Leasing State-owned Land

State board of land commissioners had discretion to award ten-year lease to bidder at 33 1/3 per cent crop share, rather than to another who bid 50 per cent, especially where lessee had farmed the land before and the board was taking less risk. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-103.1. Commissioners authorized to lease lands. The board of land commissioners is authorized to lease state lands for uses other than agriculture, grazing, timber harvest or mineral production under such terms and conditions which best meet the duties of the board as specified in section 81-103, provided however that the lease period for such leases, except for power and school site leases, may not be for longer than twenty-five (25) years.

History: En. 81-103.1 by Sec. 1, Ch. 135, L. 1974.

Title of Act

An act to provide for the lease terms of

state lands for uses other than agriculture, grazing, timber harvest, or mineral production and to amend sections 81-402, 81-407 and 81-408, R. C. M. 1947, to provide for lease terms on city and town lots.

81-104. (1805.4) Meetings of board. The board shall hold regular meetings at least once each month, and may hold special meetings whenever considered necessary, upon call of the president or a majority of the members. Three (3) members of the board constitute a quorum for the transaction of business. The governor is the president of the board; in his absence the lieutenant governor, shall preside, and in his absence the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; amd. Sec. 4, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "at least once each month" for "on the second Wednesday of each month" near the beginning of the first sentence; substituted "the

lieutenant governor, shall preside, and in his absence" for "in the absence of the lieutenant governor" in the middle of the last sentence; deleted two final sentences authorizing rules for the conduct of meetings and requiring minutes to be kept and documents to be preserved; and made minor changes in phraseology.

81-105. (1805.8) Powers and duties of the department. Under the direction of the board of land commissioners, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require. It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment, or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204,

R. C. M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the requirements for triplicate receipts for payments made to the state through the office of the state commissioner of lands and investments, and substituted the last sentence, providing for receipts for cash payment or upon request.

The 1973 amendment renumbered this section; deleted a first sentence making the commissioner ex officio secretary of the board; substituted references to the department for references to the ex officio secretary of the board; deleted "and the investment of funds arising therefrom or otherwise coming under the administration of the department" from the end of the first sentence; and made minor changes in phraseology.

Saline Seep Control Program

Chapter 100, Laws of 1975, approved March 24, 1975, established a temporary saline seep control program within the department of state lands. The act read:

"Section 1. Statement of policy. The legislature recognizes that saline-alkali damage to land and water resulting from agricultural practices or other water concentration practices in this state is a serious problem warranting legislative action to support research and implementation of solutions to prevent, reduce and correct saline alkali damage.

"Section 2. Definitions. As used in this act unless the context requires otherwise:

"(1) 'Saline-alkali damage' means the accumulation or concentration of salts and related minerals in soil or water, resulting from agricultural use of land, to such an extent that the productivity of the land or the quality of related water supplies has suffered or is likely to suffer significant deterioration.

"(2) 'Department' means the department of state lands.

"(3) 'Agricultural practices' means any use of land for the production of crops, raising of livestock, or wildlife, including dryland and irrigated crop production, range and irrigated livestock grazing, construction of water retention, delivery, or associated structures.

"Section 3. Duties and responsibilities of the department. The department shall develop and implement a program for the control of saline-alkali damage. The department shall:

"(1) Allocate grants or contracts to public and private organizations, using such funds as the legislature may appropriate, in order to conduct necessary research, education or other activities to accomplish the following objectives:

"(a) implementation of necessary agricultural practices for the prevention, reduction or correction of saline-alkali damage.

"(b) development and evaluation of agricultural practices and technology which will prevent or correct saline-alkali damage.

"(c) appraisal and monitoring of the extent, nature and magnitude of saline-alkali damage.

"(d) development of vegetation species useful for the prevention, reduction or correction of saline-alkali damage.

"(e) development of technology useful for the detection of saline-alkali damage and its causes.

"(2) Encourage or develop legislation, policies and programs for local, state and federal government which will aid in the prevention, reduction or correction of saline-alkali damage.

"(3) Identify potential sources of gifts, grants and donations and actively seek such funding for special and general research, information, education, and all other activities consistent with the purposes of this act.

"(4) Take or initiate any other lawful action consistent with the purpose of this act in order to prevent, reduce or correct saline-alkali damage.

"(5) Conduct such research or studies as are necessary to accomplish the purposes of this act.

"(6) Develop or cause to be developed short-range and long-range plans for the control, prevention, reduction and correction of saline-alkali damage.

"Section 4. Advisory council. The governor may appoint an advisory council to assist the department in the discharge of its duties and responsibilities. If appointed, the council shall be composed as follows:

"(1) Five (5) members shall be selected from areas of the state with significant salinity damage problems.

"(2) Four (4) members shall be representatives of the following state agencies: Montana state university, Montana bureau of mines and geology, the department of natural resources and conservation, and the department of agriculture.

"Section 5. Effective and termination dates. This act shall become effective upon passage and approval and shall terminate July 1, 1977, unless further extended by law.

Effective Date

Section 3 of Ch. 26, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

81-106. (1805.115) Board to correct errors. The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state, upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927; Sec. 81-1108, R. C. M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section and made minor changes in style, phraseology and punctuation.

81-107. (1805.116) Money paid by mistake to be refunded. If any money is erroneously paid to the state on any permit, lease, certificate of purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; Sec. 81-1109, R. C. M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this

section; substituted the reference to the department for a reference to the state board of land commissioners; and made minor changes in style, phraseology and punctuation.

81-108. (1805.120) Fees. The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R. C. M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the statutory schedule of fees and granted general authority for the commissioner of

lands and investments to prescribe such fees with the approval of the board of land commissioners; and made a minor change in phraseology in the final clause.

The 1973 amendment renumbered this section; substituted "department" for "commissioner of state lands and investments"; and substituted the general power to prescribe fees for specifically enumerated powers.

CHAPTER 2—COMMISSIONER OF STATE LANDS AND INVESTMENTS

Section

81-204. [Transferred].

81-205. [Transferred].

81-201 to 81-203. (1805.5 to 1805.7) Repealed.

Repeal

Sections 81-201 to 81-203 (Secs. 5 to 7, Ch. 60, L. 1927; Sec. 2, Ch. 138, L. 1943; Sec. 37, Ch. 177, L. 1965), relating to the

commissioner of state lands and investments and the state forester, were repealed by Sec. 116, Ch. 428, Laws 1973.

81-204. [Transferred.]

Compiler's Notes

Section 5 of Ch. 428, Laws 1973, redesignated this section as sec. 81-105.

81-204.1. Repealed.

Repeal

Section 81-204.1 (Sec. 1, Ch. 26, L. 1971), relating to deletion of requirement of trip-

licate receipts of commissioner, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-205. [Transferred.]

Compiler's Notes

Section 6 of Ch. 428, Laws 1973 redesignated this section as sec. 81-1122.

81-206. (1805.10) Repealed.

Repeal

Section 81-206 (Sec. 10, Ch. 60, L. 1927), relating to the biennial report of the commissioner of state lands and invest-

ments, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

81-207 to 81-210. (1805.12 to 1805.14) Repealed.

Repeal

Sections 81-207 to 81-210 (Secs. 12 to 14, Ch. 60, L. 1927; Sec. 3, Ch. 138, L. 1943; Sec. 1, Ch. 176, L. 1949; Sec. 1, Ch. 164, L. 1951; Sec. 1, Ch. 119, L. 1953; Sec. 4,

Ch. 225, L. 1963; Sec. 38, Ch. 177, L. 1965; Sec. 8, Ch. 237, L. 1967; Sec. 1, Ch. 22, L. 1971), relating to the state land commissioner and his office, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 3—SELECTION—CLASSIFICATION, APPRAISAL AND EXCHANGE OF LANDS

Section

81-301. Selection and location of lands granted by United States.

81-302. Classification—reclassification—records.

81-304. Exchange of lands with United States and counties—validation of prior actions.

81-307. Exchange of state land for private land.

81-301. (1805.15) Selection and location of lands granted by United States. Under the general direction of the board of land commissioners and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands, except timberlands, granted to this state by the United States for any purpose, and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections sixteen (16) and thirty-six (36) and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; amd. Sec. 7, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; deleted "he shall cause

to be performed without any unnecessary delay on his part all work necessary for the completion of these selections so that the state may actually receive all the lands under its various grants" from the end of the third sentence; and made minor changes in style and phraseology.

81-302. (1805.16) Classification—reclassification—records. (1) The state lands are classified as follows:

(a) Class 1. Lands which are principally valuable for grazing purposes.

(b) Class 2. Lands which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection.

(c) Class 3. Lands which are principally valuable for the production of crops.

(d) Class 4. Lands which are principally valuable for uses other than grazing, crop production, timber production or watershed protection.

(2) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the state board of land commissioners as specified in section 81-103.

When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification. A capability inventory shall be made prior to changing the classification of state lands. Such inventory shall include, when appropriate to the classification, information on soils capability, vegetation, wildlife use, mineral characteristics, public use, aesthetic values, cultural values, surrounding land use and any other resource, zoning or planning information which is related to the classification. Should a parcel of state land in one class have other multiple use or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed in so far as is possible to maintain or enhance these multiple-use values.

(3) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased or used under a different classification from that to which it actually belongs.

(4) All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs, and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state; they shall also show whether or not the coal or other minerals in the land are reserved by the United States; and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973; amd. Sec. 1, Ch. 8, L. 1974.

Amendments

The 1973 amendment numbered the subsections and lettered the subdivisions; deleted "according to the provisions of the

constitution" after "classified" in the preliminary clause of subsection (1); substituted "department" for "commissioner" near the end of subsection (6); and made minor changes in style and phraseology.

The 1974 amendment rewrote this section. For prior law, see parent volume.

81-304. (1805.19) Exchange of lands with United States and counties—validation of prior actions. (1) The board may enter into contracts or agreements with the United States, or any department thereof having jurisdiction, for the waiving and relinquishment to the United States of any rights of the state in and to sections sixteen (16) and thirty-six (36) of any township and to any other sections of state lands, provided that the state shall in lieu of the rights so waived and relinquished receive from the United States other lands of equal or greater value.

(2) The board may accept on behalf of the state title in fee simple to any land owned by a county in the state, and may convey in exchange therefor state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

(3) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with the Multiple Use Act, and the current user on the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973.

Compiler's Notes

The Multiple Use Act, referred to in the last paragraph of this section, is compiled in the United States Code as Tit. 43, secs. 1411 to 1418.

Amendments

The 1967 amendment deleted the last sentence of the first paragraph, which read "The amount of state land relinquished

under this section in any one year shall not exceed six sections"; and substituted the last sentence of the third paragraph for "The land received from the United States, under this provision, must be located in the same county as the relinquished land, and the present lessees or permittees must be recognized for the continuance of their use of the land on such terms as may be required by the respective agencies."

The 1973 amendment numbered the subsections; deleted from subsection (3) a first sentence validating certain agreements with the United States; and made minor changes in style and phraseology.

81-305, 81-306. Repealed.

Repeal

Sections 81-305, 81-306 (Sec. 1, Ch. 168, L. 1937; Sec. 1, Ch. 61, L. 1955), relating to exchange of lands with the state water

conservation board and the United States, were repealed by Sec. 116, Ch. 428, Laws 1973.

81-307. Exchange of state land for private land. (1) The board is authorized to exchange state land for private land, provided that the private land is of equal or greater value than the state land and as closely as possible, equal in area. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under section 81-2704, R. C. M. 1947.

(2) Prior to completing any such exchange, a public hearing shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised during any such hearing, the board shall make findings of fact responding to such objections and explaining their action.

(3) If the requirements of subsections (1) and (2) are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water.

(4) No such exchange shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market

value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which the state would receive under the proposed exchange.

History: En. 81-307 by Sec. 1, Ch. 472, commissioners to exchange state land for private land subject to certain requirements.
L. 1975.

Title of Act

An act to authorize the board of land

**CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS
AND CITY AND TOWN LOTS**

Section

- 81-402. Lease of state lands—crop share rental basis used.
- 81-404. Appraisal of grazing lands.
- 81-405. Renewal leases—preference right of lessee—exceptions.
- 81-406. [Transferred.]
- 81-407. Who may lease—how much and for what length of time.
- 81-407.1 Uniform lease renewal.
- 81-408. Lease expiration dates.
- 81-412. Rental, when due—cancellation for nonpayment.
- 81-413. Land to be leased in compact bodies—inspections to determine best use of land.
- 81-414. Change in terms of lease.
- 81-415. Conditions of leases—cancellation for violation of rules.
- 81-416. Form of lease—bond.
- 81-418. Liens on crops and improvements.
- 81-419. Assignment of leases—preferences—fee.
- 81-421. Compensation for improvements.
- 81-421.1. Arbitrators to fix value of improvements—appeal.
- 81-422. Cancellation of leases.
- 81-423. Leasing regulations.
- 81-424. Lease of state land to United States for military purposes authorized.
- 81-426. Filing with board required.
- 81-428. Proof of termination of lease or pledge to be filed.
- 81-433. Formula for fixing annual rental.
- 81-436. Deposit required with bid for lease—retention or return—forfeiture.

81-401. Policy of state as to appraisal and leasing state land.

References

State ex rel. Thompson v. Babeock, 147
M 46, 409 P 2d 808.

81-402. (1805.20) Lease of state lands—crop share rental basis used.

(1) Under the general direction and control of the board of land commissioners, the department shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application. As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth ($\frac{1}{4}$) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth ($\frac{1}{4}$) for high production cost crops such as, but not limited to, potatoes and sugar beets. The board may not delegate the authority to approve such special crop share rentals.

(2) In unusual cases the department may authorize a lease upon other basis than crop share, but in these unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the department shall set forth in the records the unusual conditions of the case and the rental to be charged.

(3) The rental rate for leasing all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433. As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and a record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed twenty-five (25) years.

(4) All leases of agricultural or grazing lands, or town or city lots, shall be upon condition that the board may, in its discretion, offer the land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973; amd. Sec. 1, Ch. 134, L. 1974; amd. Sec. 2, Ch. 135, L. 1974.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; substituted "by" for "under the direction of" in the second sentence of subsection (3); and made minor changes in style and phraseology.

Chapter 134, Laws of 1974, added the third and fourth sentences to subsection (1).

Chapter 135, Laws of 1974, increased the maximum lease term in subsection (3) from 5 to 25 years.

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 134 and once by Ch. 135. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

81-404. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity, and make and preserve records thereof in its office, and from time to time re-examine these lands as to their animal-unit-month carrying capacity so as to keep the records thereof in its office reasonably accurate.

(2) In appraising these grazing lands the following factors shall be taken into consideration:

(a) Inventory of the forage resources—kind, amount, and location of vegetation.

(b) Accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability.

(c) Condition of soils—the erosion situation.

(d) Other and related resources—such as timber, game animals, need for watershed protection.

(e) Record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like.

(f) Pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity.

(g) Carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; substituted "appraise"

for "cause the grazing land owned by the state to be appraised" near the beginning of subsection (1); substituted "re-examine" for "cause said lands to be re-examined" near the end of subsection (1); and made minor changes in style and phraseology.

81-405. (1805.21) Renewal leases—preference right of lessee—exceptions. (1) A lessee of state land classed as agricultural, grazing, town lot or city lot, who has paid all rentals due from him to the state, and who has not violated the terms of his lease, is entitled to have his lease renewed for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions at the time of the renewal imposed by law as terms of the lease at any time within thirty (30) days prior to its expiration if no other applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest, and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands, and \$1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract shall be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in subsection (2). If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease shall then be issued, at a rental to be determined by the board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract.

(4) Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the

board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec. 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973; amd. Sec. 1, Ch. 311, L. 1977.

Amendments

The 1973 amendment numbered the subsections; substituted "may withdraw" for "shall withdraw" near the beginning of

subsection (2); substituted "department" for "commissioner" at the end of subsection (2); and made minor changes in style and phraseology.

The 1977 amendment inserted subsections (2) and (3); and redesignated former subsection (2) as subsection (4).

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-406. [Transferred.]

Compiler's Notes

Section 13 of Ch. 428, Laws 1973, redesignated this section as sec. 81-421.1.

81-407. (1805.23) Who may lease—how much and for what length of time. No person may lease state lands, except one who is the head of a family, unless he has attained the age of eighteen (18) years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands, and may hold more than one (1) lease to state lands, and there may be included under one (1) lease tracts of lands embracing more than one (1) section. No lease to agricultural or grazing lands may be for a period other than five (5) or ten (10) years. Leases for city and town lots may not exceed twenty-five (25) years. When a lease expires or is canceled the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding, the term of the expired or canceled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land which are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases shall so provide.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973; amd. Sec. 3, Ch. 135, L. 1974.

Amendments

The 1971 amendment reduced the age specified at the end of the first sentence from 21 to 19 years.

Chapter 94, Laws of 1973, reduced the age specified at the end of the first sentence from nineteen to eighteen years.

Chapter 428, Laws of 1973, inserted "and may hold more than one (1) lease to state lands" in the middle of the second sentence; deleted a sentence restricting the duration of leases; substituted "department" for "commissioner" near the beginning of the present fourth sentence; and made minor changes in phraseology and style.

The 1974 amendment increased the maximum lease term for city and town lots from 5 to 25 years.

81-407.1. Uniform lease renewal. Notwithstanding any other section in this chapter, the department may, in order to achieve uniformity in the

number of lease renewals per year, issue 4-, 5-, and 6-year grazing and agricultural leases during the 5-year period 1979-1983. Leases to be issued for other than 10-year terms shall be chosen by means of a nondiscretionary, random process and shall be limited to those leases which were not subject to competitive bid at the previous renewal.

History: En. 81-407.1 by Sec. 1, Ch. 304, L. 1977.

Title of Act

An act to authorize the board of land commissioners to issue agricultural and grazing leases for other than 10-year

terms in order to achieve uniformity in the number of lease renewals per year; and to provide for a termination date.

Termination Date

Section 2 of Ch. 304, Laws 1977 read "This act terminates on July 1, 1983."

81-408. (1805.24) Lease expiration dates. All leases for agricultural lands, grazing lands hereafter issued no matter on what date issued, shall expire on February 28 within ten (10) years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927; amd. Sec. 3, Ch. 65, L. 1939; amd. Sec. 4, Ch. 135, L. 1974.

Amendments

The 1974 amendment deleted "and town and city lots" after "grazing lands."

81-412. (1805.26) Rental, when due—cancellation for nonpayment. The rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1, and if not paid by April 1 the lease is canceled. The department shall notify the lessee by letter addressed to the post-office address given in the lease of the cancellation, and the land is then open for lease to other applicants.

History: En. Sec. 26, Ch. 60, L. 1927; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the fee of \$2.50 for issuing the lease, and granted general authority for the commissioner of lands and investments to establish the fee with the approval of the board of land commissioners.

The 1973 amendment deleted "and such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for issuing the lease" following "rental for the first year of the

lease" near the beginning of the first sentence; deleted "to the commissioner of state lands and investments" following "due and payable" in the third sentence; substituted "before March 1" for "on December 15 next preceding the rental year to which the rental applies" in the third sentence; substituted "by April 1" for "on or before February 1 next following" near the end of the third sentence; substituted "is canceled" for "this non-payment shall have the effect of canceling the lease from and after February 28 of that year" at the end of the third sentence; substituted "department" for "commissioner" in the last sentence; and made minor changes in style and phraseology.

81-413. (1805.27) Land to be leased in compact bodies—inspections to determine best use of land. All lands shall be leased in as compact bodies

as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973.

ences to the department for references to the commissioner and his field agent; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted refer-

81-414. (1805.28) Change in terms of lease. When land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the department stating how much land he desires to cultivate and showing the location in the section of the land, and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in section 81-422, or require the lessee to pay twice the regular agricultural rental on the land so cultivated in addition to the grazing rental. The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973.

Amendments

The 1971 amendment inserted "by the commissioner subject to the appeal procedure provided in section 81-422, R. C. M. 1947" in the third sentence.

The 1973 amendment substituted references to the department for references to the commissioner; deleted "send his lease

to the commissioner to have the necessary changes made therein" following "location in the section of the land" in the first sentence; substituted "the department shall either cancel the lease" for "the lease shall be subject to cancellation by the commissioner" in the third sentence; substituted "require the lessee to pay" for "the lessee shall be liable for" near the end of the third sentence; deleted "thereof as may be decided by the board" from the end of the third sentence; and made minor changes in style and phraseology.

81-415. Conditions of leases—cancellation for violation of rules. (1) It shall be a condition of all leases of agricultural or grazing state lands, (a) that, in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and min-

imizing wind and soil erosion and noxious weeds, and planting crops with a view of securing the greatest yields of good quality, and (b) that, in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved shall be canceled by the department, subject to the appeal procedure provided in section 81-422.

History: En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973.

Amendments

The 1971 amendment, in the second paragraph, provided for mandatory cancellation by the commissioner subject to ap-

peal to the board, rather than discretionary cancellation by the board on recommendation by the commissioner and after notice and opportunity for hearing.

The 1973 amendment numbered the subsections; substituted the reference to the department for a reference to the commissioner in subsection (2); and made minor changes in style and phraseology

81-416. (1805.29) Form of lease—bond. The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one (1) copy shall be mailed to the lessee, and one (1) copy shall be preserved by the department. Unless the board decides otherwise, these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; amd. Sec. 19, Ch. 428, L. 1973.

reference to the department for a reference to the commissioner; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted the

81-418. (1805.31) Liens on crops and improvements. The state has a lien upon all crops growing upon any of its lands, and upon the crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on the lands, or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and all other improvements, and is prior and superior to all other liens, except threshermen's liens and seed liens specified in sections 45-701 and 45-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county

in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand, or the department, may seize and sell, either at a private or public sale, upon giving notice for not less than three (3) days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; amd. Sec. 20, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the final clause of the second sentence, beginning "but only for the aggregate amount," for "as specified in section 52-301"; deleted "or his deputy" following "sheriff of

the county in which the land is located" in the fourth sentence; deleted "or his agent" following "may demand of the lessee" in the fourth sentence; deleted "any personal representative of" before "the department, may seize," in the fourth sentence; and made minor changes in style and phraseology.

81-419. (1805.32) Assignment of leases — preferences — fee. Leases to state lands may be assigned on blanks prescribed by the department, but no assignment is binding on the state unless the assignment is filed with the department, approved by it and payment made of the assignment fee under section 81-108. Preference shall always be given to the applicant who wants the land for his own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil, and so that they are not compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, or subleases state lands without filing a copy of the sublease with the department and without receiving its approval, the department shall cancel the lease, subject to the appeal procedure provided in section 81-422.

History: En. Sec. 32, Ch. 60, L. 1927; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973.

Amendments

Chapter 22, Laws of 1971, deleted the assignment fee of \$3.00 and the sublease fee of \$2.00 and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Chapter 27, Laws of 1971, combined the

former last two sentences into the present last sentence and provided for mandatory cancellation by the commissioner, subject to appeal, rather than discretionary cancellation by the board after hearing. For prior version, see parent volume.

The 1973 amendment substituted references to the department for references to the state board of land commissioners; substituted "the assignment fee under section 81-108" for "such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners" at the end of the first sentence; and made minor changes in style and phraseology.

81-421. (1805.34) Compensation for improvements. (1) A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, and improvement of the land itself, irrigation ditches, sheds, wells, and

reservoirs, and similar improvements. When another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession. However, if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed two dollars and fifty cents (\$2.50) per acre, and if two (2) or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land. If the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value shall be ascertained and fixed as provided in section 81-421.1.

(2) In determining the value of these improvements, consideration shall be given to their original cost, their present condition, their suitability for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove the movable improvements on the land and dispose of them to parties other than the lessee; if he fails to remove the improvements from the land within sixty (60) days from the date of the expiration of his lease, all of the improvements become the property of the state, unless the department for good cause grants additional time for their removal. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under section 81-421.1, or that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "section 81-421.1" for "this act" at the end of subsection (1);

substituted "department" for "commissioner" near the end of the third sentence; changed the statutory reference near the end of the last sentence in subsection (2) from section 81-406 to section 81-421.1; and made numerous minor changes in style and phraseology.

81-421.1. (1805.22) Arbitrators to fix value of improvements—appeal. If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee, and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three (3) arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation so fixed,

he may within ten (10) days appeal from their decision to the department which shall examine the improvements, and its decision shall be final. The department shall charge and collect the actual cost of the re-examination to the owner and the new lessee in such proportion as in its judgment justice may demand. The value of the improvements shall be ascertained and fixed as section 81-421 provides.

History: En. Sec. 22, Ch. 60, L. 1927; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R. C. M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section; substituted references to the department for references to the commission-

er; deleted "thereupon cause the chief field agent or assistant field agent to" before "examine the improvements" near the end of the second sentence; substituted "section 81-421 provides" for "hereinafter and in this act provided" at the end of the section; and made minor changes in style and phraseology.

81-422. (1805.36) Cancellation of leases. (1) The department may cancel a lease for any of the following causes: fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; using the land for other purposes than those authorized by the lease; and for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

(2) When the department cancels a lease pursuant to this section or sections 81-414, 81-415, or 81-419, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is fifteen (15) days from the date the notice is received by the lessee. The lessee has fifteen (15) days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within ten (10) days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after ten (10) days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for releasing as provided by law. If the board finds that the terms of the lease have been violated, but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three (3) times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973.

Amendments

The 1971 amendment substituted "commissioner" for "board" in two places;

added the last two paragraphs on the procedure for cancellation by the commissioner and appeal to the board; and made a minor change in phraseology.

The 1973 amendment numbered the subsections; substituted references to the department for references to the commission-

er; inserted "for a hearing before the board" at the end of the third sentence in subsection (2); deleted from subsection (3) a second sentence reading "All testimony shall be given under oath and reduced to writing"; and made minor changes in style and phraseology.

Effective Date

Section 6 of Ch. 27, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

81-422.1. Repealed.

Repeal

Section 81-422.1 (Sec. 1, Ch. 27, L. 1971), relating to the procedure for terminating

leases, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-423. (1805.37) Leasing regulations. The board may prescribe rules and regulations relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state.

History: En. Sec. 37, Ch. 60, L. 1927; amd. Sec. 24, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the

reference to the board for a reference to the state board of land commissioners; and made minor changes in style and phraseology.

81-424. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States, for military purposes, any state land, whether such land was received by the state through federal land grants, or whether such land consists of so-called "mortgage lands," on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state; rental shall be payable at the end of each year of the lease.

History: En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "Notwith-

standing any inconsistent provision of law, general, special or local" from the beginning of the section; and made numerous changes in style and phraseology.

81-426. Filing with board required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within thirty (30) days after receipt of the pledge agreement or mortgage, file it, or a certified copy thereof, with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the filing fee of \$2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment substituted "the department" for "the state board of land commissioners" at the end of the section; deleted "and shall pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for the filing thereof" from the end of the section; and made minor changes in phraseology.

81-428. Proof of termination of lease or pledge to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands

which is pledged or mortgaged as provided in sections 81-425 through 81-431 shall, within thirty (30) days after payment of the indebtedness secured thereby, or within thirty (30) days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the filing fee of \$2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment inserted the statutory reference to sections 81-425 through 81-431; substituted "department" for "state board of land commissioners"; deleted "and pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for said filing" from the end of the section; and made minor changes in style and phraseology.

81-433. Formula for fixing annual rental. (1) In this section:

(a) "Animal unit" means one (1) cow, one (1) horse, five (5) sheep, or five (5) goats.

(b) "Animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one (1) animal unit for one (1) month.

(2) The board shall establish the per annum rental rate per section of all grazing lands which are the property of the state upon the animal-unit-month basis as provided in this section.

(3) In fixing the minimum annual rental per section, the following formula shall be used:

The base rental shall be computed by multiplying fifty cents (\$.50) plus three (3) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(a) to (c). * * * [Same as parent volume.]

(4) The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the department made under section 81-404.

(5) The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 97 and once by Ch. 428. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite

section embodying the changes made by both amendments.

Amendments

Chapter 97, Laws of 1973, increased the base rental from 32 cents plus twice the price of beef to 50 cents plus three times the price of beef.

Chapter 428, Laws of 1973, numbered the subsections; lettered the subdivisions in subsection (1); substituted "department" for "commissioner of state lands and investments" near the end of subsec-

tion (4); deleted "the bureau of agricultural economics of" before "the United States department of agriculture" in sub-

section (5); and made minor changes in style and phraseology.

81-436. Deposit required with bid for lease—retention or return—forfeiture. A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to twenty per cent (20%) of the annual rental bid in the case of grazing land, and an amount equal to one dollar (\$1) per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis. The department shall retain the deposit of the successful bidder and apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder, and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the department to the credit of the proper interest and income account in the federal and private revenue fund.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973; amd. Sec. 1, Ch. 133, L. 1974.

the commissioner; and made minor changes in style and phraseology.

The 1974 amendment reduced the deposit required for leasing grazing land from an amount equal to the annual rental to 20% of the annual rental.

Amendments

The 1973 amendment substituted references to the department for references to

CHAPTER 5—COAL MINING LEASES AND PERMITS

Section

- 81-501. Coal mining leases.
- 81-502. Maximum term of lease—form.
- 81-503. Royalty.
- 81-506. Improvements of former lessee.
- 81-508. Report and payment of royalty.
- 81-510. Disposition of royalties and other receipts.
- 81-511. Limitations on leasing.

81-501. (1805.38) Coal mining leases. (1) The state board of land commissioners may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated, and subject to such rules and regulations as the board prescribes. Prior to issuing a coal mining lease, the board shall evaluate the coal and land proposed to be leased for the purpose of determining the fair market value of any coal reserves located on the land, giving opportunity for and consideration to, public comments on such evaluation. Leases shall be awarded by a competitive bid system, including a bonus bid for the first year's rental, and no lease shall be awarded at less than fair market value. The authority to lease extends to state lands no matter how acquired, and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued; in such cases and in all cases where the

lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee. Every coal lease shall be conditioned upon compliance with chapters 10 and 16, Title 50, R. C. M. 1947.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal, and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease, after a hearing before the board.

History: En. Sec. 38, Ch. 60, L. 1927; amd. Sec. 30, Ch. 428, L. 1973; amd. Sec. 1, Ch. 358, L. 1975.

Amendments

The 1973 amendment numbered the sub-

sections and made numerous changes in style and phraseology.

The 1975 amendment inserted the second and third sentences of subsection (1); added the last sentence of subsection (1); and made a minor change in phraseology.

81-502. (1805.39) Maximum term of lease—form. Coal mining leases shall be issued for a primary term of ten (10) years, and so long thereafter as coal is produced from such lands in commercial quantities. The rental and royalty terms of each lease shall be subject to readjustment to reflect fair market value at the end of its primary term of ten (10) years and at the end of each five (5) year period thereafter if the lease is producing coal in commercial quantities. A lease not producing coal in commercial quantities at the end of the primary term shall be terminated, unless the leased lands are described in a strip mine permit issued under section 50-1039, R. C. M. 1947, or in a mine site location permit under section 50-1607, R. C. M. 1947, prior to the end of the primary term, and the lease shall not be terminated so long as said lands are covered and described under valid permit. For the purpose of this chapter, "commercial quantities" means that quantity of coal which can be sold at profit in the commercial market. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973; amd. Sec. 2, Ch. 358, L. 1975.

Amendments

The 1967 amendment increased the maximum term for leases on state lands from 10 to 20 years, and increased the fee from \$2 to \$5.

Chapter 22, Laws of 1971, deleted the fee of \$5.00 for issuing the lease and approving the bond, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Chapter 291, Laws of 1971, added the second paragraph.

The 1973 amendment deleted "the fee for issuing the lease and proving the bond hereinafter provided shall be such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners payable to the commissioner" from the end of the first paragraph; deleted a second paragraph giving temporary exchange rights to certain lessees; and made minor changes in style and phraseology.

The 1975 amendment substituted all but the last sentence of this section for a sentence which read: "No coal mining lease may be issued for more than twenty (20) years, but the board may establish rules for the renewal of a lease at the expiration of the term it considers proper and necessary."

81-503. (1805.40) Royalty. The compensation of the state under all coal mining leases shall be upon a rental and royalty basis and shall be

fixed and determined by the board. The rental shall be on a per acre basis but in no case shall it be less than two dollars (\$2) per acre. The amount of such royalty shall be based upon the kind, grade and character of the coal in each particular mine, upon the size, shape and nature of the coal vein, strata or body, and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor affecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than ten per cent (10%) of the f.o.b. mine price of a ton prepared for shipment.

History: En. Sec. 40, Ch. 60, L. 1927; amd. Sec. 3, Ch. 358, L. 1975.

Amendments

The 1975 amendment inserted "rental and" in the first sentence; inserted the second sentence; and at the end of the section substituted "ten per cent (10%) of

the f.o.b. mine price of a ton prepared for shipment" for "twelve and one-half (12½) cents per ton of two thousand (2,000) pounds."

Repealing Clause

Section 4 of Ch. 358, Laws 1975 read "Section 81-504 is repealed."

81-504. (1805.41) Repealed.

Repeal

Section 81-504 (Sec. 41, Ch. 60, L. 1927), relating to the application for coal mining

lease, was repealed by Sec. 4, Ch. 358, Laws of 1975.

81-506. (1805.43) Improvements of former lessee. When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee, and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in section 81-421.1.

Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer, or that he has tendered payment as so fixed, or that the owner desires to remove his improvements.

History: En. Sec. 43, Ch. 60, L. 1927; amd. Sec. 32, Ch. 428, L. 1973.

Amendments

The 1973 amendment changed the refer-

ence at the end of the first paragraph from section 81-406 to 81-421.1; and made minor changes in style and phraseology.

81-508. (1805.45) Report and payment of royalty. On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes, showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales, and any additional information required by the department. The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; amd. Sec. 33, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "last day of each month" for "fifteenth day of each calendar month" near the beginning

of the section; substituted "every holder of a producing coal mining lease" for "the lessee"; substituted references to the department for references to the commissioner; and made minor changes in style and phraseology.

81-510. (1805.47) Disposition of royalties and other receipts. All fees, rentals, royalties and bonuses collected under state coal leases shall be paid to the department of state lands and credited as follows: All fees shall be credited to the state general fund, all rentals and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties shall be credited to the permanent fund arising from the grants the land under lease belongs.

History: En. Sec. 47, Ch. 60, L. 1927; amd. Sec. 34, Ch. 428, L. 1973; amd. Sec. 5, Ch. 358, L. 1975.

Amendments

The 1973 amendment rearranged the language; substituted "department" for "commissioner"; inserted a new clause providing for credits to the general fund; substituted "the permanent fund arising from the grant to which the land under each particular lease belongs" at the end of the section for "the same funds that such re-

ceipts under oil and gas leases on such lands would be credited under the provisions of this act"; and made other minor changes.

The 1975 amendment entirely rewrote this section which read: "The department shall credit fees and penalties collected under coal mining leases to the general fund, and rentals, royalties, and bonuses to the permanent fund arising from the grant to which the land under each particular lease belongs."

81-511. Limitations on leasing. The state board of land commissioners shall not issue leases:

(1) to any corporation the majority stock of which is controlled by interests foreign to the United States, except for those interests within countries whose borders are contiguous to the United States and any corporation, individual, or person who contracts the sale of coal from such leased lands to any individual, corporation or person foreign to the United States, except those countries contiguous to the United States shall have the lease terminated; or

(2) if after a determination of the amount, location, and quality of the coal on the lands for lease, the extraction of the coal from such lands by strip mining methods would adversely affect the methods of recovery of deep minable coal from such operations on such lands in the future.

History: En. 81-511 by Sec. 6, Ch. 358, L. 1975.

R. C. M. 1947; and repealing section 81-504, R. C. M. 1947.

Title of Act

An act revising the provisions governing coal mining leases on state lands; providing for bidding, terms, eligible lessees, and royalties on such leases; amending sections 81-501, 81-502, 81-503, and 81-510,

Grandfather Clause

Section 7 of Ch. 358, Laws 1975 read "Nothing in this act may be construed to impair the obligation of any contract entered into by the board before the effective date of this act."

CHAPTER 6—PROSPECTING PERMITS AND MINING LEASES

Section

81-601.	Definitions.
81-601.1.	Prospecting permits.
81-602.	Empowering board to lease, etc.
81-603.	Provisions of leases.
81-604.	Royalties—pooling agreements and unit plans of operation.
81-605.	Quantity of lands.
81-606.	Applications.
81-607.	Bonds to state.
81-608.	Bonds to protect lessees, contractees, etc.
81-611.	Examination of lands.
81-612.	Failure of title.
81-613.	Assignment of leases or permits.
81-614.	[Transferred.]
81-615.	[Transferred.]
81-616.	Notice to lessees.

81-601. Definitions. In this chapter:

(1) “Metalliferous minerals” mean gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(2) “Gems” mean sapphires, rubies, and other stones commonly known as “precious stones” or “semiprecious stones,” but do not mean stones or other earth materials commonly used in building or construction work.

(3) “Mining” means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems, and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(4) “Mining lease” means a lease issued by the state board of land commissioners for the prospecting for or mining of metalliferous minerals or gems. The term “mining lessee” means the holder of a mining lease whether the holder is the original lessee under the lease, or holds the lease as successor of the original lessee.

(5) “Returns” mean the net amount received by the shipper from products of mining operations, after deducting transportation costs and smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

(6) “Full market value” means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937;
amd. Sec. 35, Ch. 428, L. 1973.

bers for letters in designating the sub-
sections; and made minor changes in style
and phraseology.

Amendments

The 1973 amendment substituted num-

81-601.1. Prospecting permits. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under section 81-108. The permittee shall also pay an annual fee established by the department and approved by the board at the end of each year during

the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board. During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it shall be in the form and subject to all the terms and conditions specified in this chapter, as in the case of a mining lease issued under this chapter. The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this chapter, and in any event the permittee has preference without competitive bidding, and upon the most favorable terms permitted under this chapter, to forty (40) contiguous acres. If some other person makes a better bid for a mining lease upon the land covered by the permit, and if the board awards a mining lease to a better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under his permit in connection with his prospecting and exploration work, and the permittee may remove from the land, within thirty (30) days from the date the board gives the permittee notice of the issuance of the mining lease, or within such further time as the board, upon good cause shown, allows, any machinery, equipment, improvements, and other property placed thereon by him.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R. C. M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated statutory fees for issuance of prospecting permits without lease, and granted general authority for the commissioner of lands and investments to prescribe such fees with the approval of the board of land commissioners.

The 1973 amendment renumbered this section; deleted a first sentence saving permits and leases outstanding in 1937; substituted references to the department for references to the commissioner of

state lands and investments; substituted "the issuance fee under section 81-108" at the end of the first sentence for "such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners at the time of the issuance of such permits"; substituted "The permittee shall also pay an annual fee established by the department and approved by the board" for "and such further fees as may be established by the commissioner of state lands and investments with approval of the state board of land commissioners" at the beginning of the second sentence; and made minor changes in style and phraseology.

81-602. Empowering board to lease, etc. The board may, in its discretion, subject to the other provisions of this chapter, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water, and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining metalliferous minerals or gems. These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

History: En. Sec. 2, Ch. 148, L. 1937; **Amendments**
amd. Sec. 36, Ch. 428, L. 1973. The 1973 amendment made minor
changes in style and phraseology.

81-603. Provisions of leases. Leases issued under this chapter shall give the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases. A lease may contain reasonable provisions for preliminary prospecting periods, and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any), and for the prosecution of mining after the prospecting period. It may provide for the payment of rentals in conjunction with the work requirements, or may prescribe cash rentals as an alternative, or otherwise, as the board considers best. It shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by him, in the event of the termination of the lease by forfeiture or by lapse of time. It may also contain other provisions the board and the lessee agree upon, not inconsistent with this chapter. In short the board in making the leases may exercise business discretion, so long as this chapter is not violated. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this chapter or extend the term of any lease or prospecting permit issued under this chapter, subject to the limitations contained in section 81-602.

History: En. Sec. 3, Ch. 148, L. 1937; **Amendments**
amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. The 1973 amendment made minor
37, Ch. 428, L. 1973. changes in style, punctuation and phraseology.

81-604. Royalties—pooling agreements and unit plans of operation.

(1) In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than five per cent (5%) of the returns from, or of the full market value of, the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

(2) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands, for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights, and partly on land in which others hold the mining rights. From each cleanup of

values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights, bears to the total yardage or area mined and included in the cleanup. The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease, or to a smaller percentage than the five per cent (5%) minimum under this section.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the sub-

sections; substituted "smaller percentage than the five per cent (5%) minimum under this section" for "less percentage than the minimum provided by law" at the end of subsection (2); and made minor changes in style, phraseology and punctuation.

81-605. Quantity of lands. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice, for the profitable recovery of the metalliferous minerals or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937; amd. Sec. 39, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-606. Applications. Application for a mining lease shall be made to the department on a form prescribed by it.

History: En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 7, Ch. 22, L. 1971; amd. Sec. 40, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated provisions for a maximum fee of \$100 and setting forth criteria for the determination thereof, and instead granted general authority for the commissioner of lands

and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment rewrote this section, which formerly provided for the forms of applications to be prepared by the state board of land commissioners and for a fee to be paid at the time of issuance of a mining lease.

81-607. Bonds to state. The board may, at the time of the execution and delivery of a mining lease, or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require new or additional bonds if, in its discretion, the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "the department" for "the board" in the first sentence; substituted "and amount pre-

scribed by the board" at the end of the second sentence for "and the sufficiency thereof to be subject to the approval of the board"; deleted "with it in connection with any such mining lease" from the end of the last sentence; and made minor changes in style and phraseology.

81-608. Bonds to protect lessees, contractees, etc. If the lands at the time of the issuance of a mining lease have been sold, or are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee, and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee. The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time. Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee, for alleged violation of the terms of the bond by the mining lessee, and such suit shall be brought by the claimant in the name of the state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "the

department" for "said board" preceding "a corporate surety bond" near the end of the first sentence; and made minor changes in style and phraseology.

81-611. Examination of lands. Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein, for the purpose of determining whether those lands are of such a character as to warrant the issuance of a mining lease thereon, and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this chapter. Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the department, require the applicant for the lease to deposit with the department an amount of money, not exceeding five hundred dollars (\$500) in any one case, which, in its judgment, will cover the cost of a special examination, to enable the board to pass upon the application in accordance with this chapter. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department. The department shall make and preserve complete records of all such examinations.

History: En. Sec. 11, Ch. 148, L. 1937; amd. Sec. 43, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department for references to the board; and made minor changes in style and phraseology.

81-612. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board, are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: En. Sec. 12, Ch. 148, L. 1937; amd. Sec. 44, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-613. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until the financial and moral responsibility of the assignee has been approved by the board, nor until there is deposited with the department:

(a) The assignment or an executed copy thereof;

(b) An instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment, or new bonds conforming to all the requirements of section 81-607; and

(c) A fee prescribed under section 81-108.

History: En. Sec. 13, Ch. 148, L. 1937; amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted from subdivision (c) the fee of \$2.50, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment substituted "department" for "board" at the end of the preliminary paragraph; rewrote subdivision (c), which formerly read "Such fee as may be prescribed by the commissioner of the state lands and investments with the approval of the state board of land commissioners"; and made minor changes in style and phraseology.

81-614. [Transferred.]

Compiler's Notes

Section 46 of Ch. 428, Laws 1973, redesignated this section as sec. 81-2305.

81-615. [Transferred.]

Compiler's Notes

Section 47 of Ch. 428, Laws 1973, redesignated this section as sec. 81-601.1.

81-616. Notice to lessees. Upon the approval of an application for a prospecting permit or a mining lease under this chapter, the department shall promptly give written notice, by ordinary mail, to the lessee or permittee, and to any holder of an agricultural or grazing lease embracing the same land, or to any holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to the

permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "approval" for "granting" near the beginning of the first sentence; substituted "department" for "commissioner of state lands and investments" near the begin-

ning of the first sentence; substituted "lessee or permittee" for "person, association of persons, or corporation to whom such permit or lease shall be so issued" in the middle of the first sentence; deleted "if there be such purchaser or patentee" at the end of the first sentence; and made minor changes in style and phraseology.

81-618 to 81-620. Repealed.

Repeal

Sections 81-618 to 81-620 (Sec. 18, Ch. 148, L. 1937; Secs. 1, 2, Ch. 205, L. 1945; Sec. 1, Ch. 146, L. 1953), repealing prior

law and relating to leases outstanding under the prior law, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 7—LEASES AND PERMITS FOR DEPOSITS OF STONE, GRAVEL, SAND AND OTHER MINERALS

Section

81-701. The board may issue leases.

81-702. Report of lessee and payment and distribution of royalties and other receipts.

81-704. Stone, gravel and sand permits for public use.

81-701. (1805.52) The board may issue leases. When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of the above named deposits, upon such terms and conditions as the board may determine. All such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board is fair and reasonable. The fee for issuing the lease is the same as for an oil and gas lease. No such lease shall be made for a longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "to which

the title is vested in the state, and which lands have not been sold by the state under certificate of purchase, or otherwise" following "When there are found upon state lands" at the beginning of the section; and made minor changes in style and phraseology.

81-702. (1805.53) Report of lessee and payment and distribution of royalties and other receipts. On or before the last day of each month,

every holder of a producing lease under this chapter, shall make a report to the department of state lands on a form the department prescribes, showing the amount of substances mined or extracted from the lands in the preceding month, the price obtained, the total amount of sales and any additional information required. The report shall be verified by affidavit of the lessee, or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973.

Amendments

The 1973 amendment changed the date on which the report is due from the fif-

teenth to the last day of the month; inserted "producing" before "lease" near the beginning of the first sentence; substituted references to the department of state lands for references to the state board of land commissioners; and made minor changes in style and phraseology.

81-704. (1805.55) Stone, gravel and sand permits for public use. The board may in its discretion, issue permits upon such terms and conditions it determines, to the department of highways, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state, granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys. The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; amd. Sec. 51, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the

reference to the department of highways for a reference to the state highway commission; and made minor changes in style and phraseology.

CHAPTER 8—GRANTING OF EASEMENTS FOR PUBLIC PURPOSES

Section

- 81-801. Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by the department of natural resources and conservation.
- 81-802. Easements for school sites and grounds and other public uses.
- 81-803. Easements on state land—application for—action on.

81-801. (1805.56) Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by the department of natural resources and conservation. (1) Any state lands needed by the United States in the construction of projects for the control of floods, river regulation, conservation of water, irrigation, and reclamation works, or transmission or distribution of electric energy, shall, upon application to the board of land commissioners, be sold and

conveyed to the United States at the price per acre fixed by the board of appraisers appointed by the United States to appraise and value lands to be included within such projects and needed by the United States in the construction thereof, subject, however, to the approval of the state board of land commissioners and the price limitations of the Enabling Act and the state constitution.

(2) There is granted to the United States over all state lands an easement of sufficient width for the purpose desired for right of way for ditches, canals, tunnels, telephone, telegraph, and electric power lines now constructed or to be constructed by the United States in furtherance of the reclamation of arid lands, flood control, river regulation, conservation of water, and transmission and distribution of electric energy.

(3) All conveyances of state lands shall contain a reservation of such rights of way easements. If the lands herein granted as rights of way cease to be used for that purpose, they shall revert to the state, upon notice to that effect being given to the proper authorities.

(4) The mineral reservations now applying to sale of lands received through grants from the United States apply to all lands sold to the United States under this section, but all prospecting and exploration for minerals therein, the mining and removal thereof, and all operations carried on in connection therewith, must be carried on in such manner and under such regulations that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.

(5) Lands needed by the United States for any of the previously specified purposes may be appraised or reappraised without appraising the remaining state lands in the county in which they are located. The lands shall be appraised at their full market value.

(6) The provisions of this section governing the sale of state lands to the United States also apply to the sale of state lands for projects financed by the United States under the administration of the department of natural resources and conservation, except as to appraisal by the United States.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973.

tion" for "act" near the beginning of subsections (4) and (6); substituted "department of natural resources and conservation" for "state water conservation board" near the end of subsection (6); and made minor changes in phraseology.

Amendments

The 1973 amendment substituted "sec-

81-802. (1805.57) Easements for school sites and grounds and other public uses. The board may grant easements in state lands for school-house sites and grounds, for public parks, community buildings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.

History: En. Sec. 57, Ch. 60, L. 1927; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style.

81-803. (1805.61) Easements on state land—application for—action on. (1) Application for an easement on state land must be made to the department of state lands. It shall describe the proposed right of way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information the department requires. This application shall be accompanied by two (2) exact copies of the official plat of the proposed highway, street, or other easement duly verified by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each forty (40) acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that forty (40) acre tract or government lot. When deemed necessary by the department, these plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. However, when the purpose of the right of way applied for is the transmission or distribution of electric energy, or the construction and operation of pipelines or telephone, telegraph or radio systems, the plats and measurements need not be given, except the description of the location of the center line of the right of way, and the entire right of way may be applied for in one application with only one plat of the entire right of way required. Easements granted under this section include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

(2) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right of way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation shall be the full market value of the estate or interest disposed of through the granting of the right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right of way is granted according to the plat, the plat shall become the official plat thereof, and shall be retained in the office of the department. The board shall issue right of way deeds for all such easements that it grants, upon full payment being made.

(3) If the state land over or through which a right of way is applied for is under certificate of purchase or sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway, street, or other easement, and to the amount of compensation and damages to be paid, must be filed with the board before the right of way is granted. The board is the judge of how much compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, shall be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights of way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department of state lands for references to the state board of land commissioners; substituted "section" for "provisions of this act" in the last sentence of

subsection (1); substituted "examining proposed right of way" for "cause the proposed right of way to be viewed and examined by the chief field agent or some assistant field agent" in the first sentence of subsection (2); substituted "issue right of way deeds for all such easements that it grants" for "cause right of way deeds to be issued for all such easements that it may hereafter grant" near the end of subsection (2); and made minor changes in style, punctuation and phraseology.

CHAPTER 9—SALE OF STATE LANDS

Section

- 81-901. Certain state lands not subject to sale.
- 81-902. Mineral reservations in state lands.
- 81-905. Surveying and platting left to discretion of board.
- 81-907.1. Disposition of former institutions.
- 81-908. Who may purchase and how much.
- 81-910. Notice of sale.
- 81-912. Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.
- 81-915. Terms of payment.
- 81-917. Lien on improvements and crops for principal, interest.
- 81-919. Settlement for improvements.
- 81-921. Certificate of purchase.
- 81-923. Payments of installments.
- 81-924. Default in payment of purchase price—cancellation of certificate.
- 81-926. Certificates may be assigned.
- 81-927. Lost certificate.
- 81-928. Land subject to taxation.
- 81-930. Lands reverting to state—procedure.
- 81-932. Patents, how executed.

81-901. (1805.64) Certain state lands not subject to sale. Lands classified as timberlands are not subject to sale. but timber thereon may be sold and disposed of in the manner provided by law. Lands which in the judgment of the board of land commissioners are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits, are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

History: En. Sec. 64, Ch. 60, L. 1927; amd. Sec. 55, Ch. 428, L. 1973.

lowing "oil shale" in the second sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment deleted "gas" fol-

81-902. (1805.65) Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits, except sand, gravel, building stone, and brick clay, in state lands, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to

prospect for, develop, mine, and remove those deposits and to occupy and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "state

lands" for "lands belonging to the state of Montana, or which may hereafter become property of the state" in the first sentence; substituted "before July 1, 1927" in the first sentence for "already"; and made minor changes in style, phraseology and punctuation.

81-905. (1805.68) Surveying and platting left to discretion of board. It shall be entirely optional with the board whether or not state lands, or any part thereof, shall be surveyed, platted and laid off into blocks and lots as hereinabove provided, as may appear to be for the best interests of the state. All lands within the limits of any town or city or within three (3) miles of such limits shall, however, be subdivided into lots or tracts of not more than five (5) acres each before being offered for sale and the lots must then be sold alternately at regular sales of state lands.

When such tracts of five (5) acres or less have been sold, the board shall whenever deemed necessary cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927; amd. Sec. 41, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "within the limits of any town or city or within three (3) miles of such limits" in the sec-

ond sentence of the first paragraph for "of the fourth class as defined by section 1, article XVII, of the constitution"; and deleted "as provided by section 2, article XVII, of the constitution" after "sold alternately" in the second sentence of the first paragraph.

81-907.1. Disposition of former institutions. Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which are no longer used for institutional purposes may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to the state enabling act and constitutional restrictions. Disposal of such property shall not be finally concluded until 60 days public notice of the terms of the proposed disposal shall have been given.

History: En. 81-907.1 by Sec. 1, Ch. 410, L. 1977.

Title of Act

An act providing for the disposition of former state institutions no longer used for institutional purposes; providing an immediate effective date.

Effective Date

Section 2 of Ch. 410, Laws 1977 provided the act should be effective on its passage and approval. Approved April 18, 1977.

81-908. (1805.71) Who may purchase and how much. State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of eighteen (18) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to an area exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed.

History: En. Sec. 71, Ch. 60, L. 1927; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified at the end of the second sentence of the first paragraph from 21 to 19 years.

The 1973 amendment reduced the age specified at the end of the second sentence of the first paragraph from 19 to 18 years.

81-910. (1805.73) Notice of sale. (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the four (4) consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale, and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale, and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted references to the de-

partment for references to the commissioner; substituted "a newspaper of general circulation in" for "the official county paper" in the first sentence of subsection (1); and made minor changes in style, phraseology and punctuation.

81-912. (1805.75) Regulations concerning sale—forfeiture for non-payment—disposition of proceeds. (1) At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale, and under the direction of the department the lands shall be sold to the highest qualified bidder under the following restrictions:

- (a) No lands may be sold for less than the appraised value;
- (b) Tillable lands capable of producing agricultural crops may not be sold for less than ten dollars (\$10) per acre;
- (c) Lands principally valuable for grazing purposes may not be sold for less than five dollars (\$5) per acre.

(2) The lessee of the land need not make a higher bid than others, but he shall, if bidding an equal amount, be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(3) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars (\$50) nor more than one thousand dollars (\$1000) to be determined by the board according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery thereof in the name of the state.

(4) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "direction of the department" for "personal direction of the

commissioner or the assistant commissioner, one of whom shall be present at the sale" near the end of the preliminary clause in subsection (1); substituted "department" for "commissioner" near the end of the second sentence in subsection (3); and made minor changes in style, phraseology and punctuation.

81-915. (1805.79) Terms of payment. (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than ten per cent (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25).

(2) The balance of the purchase price shall draw interest at the rate set by the board, but in no instance shall the rate be less than five per cent (5%) per year, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years, but the board may at any time fix a shorter period than twenty (20) years for the payment of the balance on town and city lots, and different periods of time may be established for different towns and cities as the best interests of the state demand. The board shall annually review the interest rate prior to December 31 of each year and fix the interest rate for all contracts to be entered into during the succeeding year.

History: En. Sec. 79, Ch. 60, L. 1927; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973; amd. Sec. 1, Ch. 191, L. 1974.

Amendments

The 1971 amendment deleted the fee of \$5.00 for issuance of certificate of purchase, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment numbered the subsections; deleted "he shall also in all cases

pay such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for each certificate of purchase to be issued to him" from the end of subsection (1); and made minor changes in style and phraseology.

The 1974 amendment substituted "at the rate set by the board, but in no instance shall the rate be less than five per cent (5%) per year" in the first sentence of subsection (2) for "at the rate of five per cent (5%) per annum"; and added the last sentence in subsection (2).

81-916. (1805.80) Repealed.

Repeal

Section 81-916 (Sec. 80, Ch. 60, L. 1927), relating to conversion of certificates of

purchase issued prior to February 13, 1923, to amortization certificates, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-917. (1805.81) Lien on improvements and crops for principal, interest. The state has a lien prior and superior to all other liens, except threshermen's liens and seed liens as specified in sections 45-701 and 45-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, in-

terest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is hereby expressly reserved. Any person purchasing or otherwise acquiring the improvements or crops or any part thereof, takes them subject to the lien. Any representative of the department or sheriff of the county in which the land is located, or his deputy, may demand of the purchaser or his agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand, or any representative of the department, may immediately seize the improvements and crops, and upon giving three (3) days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; amd. Sec. 60, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the

latter part of the first sentence, beginning "but only for the aggregate," for "as specified in section 52-301"; and made minor changes in style, phraseology and punctuation.

81-919. (1805.83) Settlement for improvements. If any state land is sold on which there are improvements belonging to a lessee, and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of sections 81-421 and 81-421.1 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within six (6) months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "The

provisions of sections 81-421 and 81-421.1" for "All provisions of this act" at the beginning of the second sentence; substituted "department" for "commissioner" near the end of the section; and made minor changes in style and phraseology.

81-921. (1805.85) Certificate of purchase. (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase shall contain the date of sale, the name and post-office address of

the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights of way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in section 81-902 relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes, and any additional conditions, agreements, and information the board considers necessary in order to carry out the intent of this act.

History: En. Sec. 85, Ch. 60, L. 1927; amd. Sec. 62, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department" for "commissioner" in the first sentence of

subsection (1); substituted "commissioner of state lands" for "commissioner acting as secretary of the board" near the end of the first sentence in subsection (1); substituted "section 81-902" for "in this act" near the end of subsection (1); and made minor changes in style and phraseology.

81-923. (1805.87) Payments of installments. The department is not required to accept fractional payments of the installments on certificate of purchase, on account of the complications arising from the division of payments. The purchaser may make payment of one (1) or more installments before the same becomes due, but unless such payments are made at least six (6) months before the installments become due, no reduction may be made in the interest payments. If installments on principal and interest are paid more than six (6) months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due. If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of six per cent (6%) per annum from the date due until the date actually paid. Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927; amd. Sec. 63, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment" for "commissioner" at the beginning of the first sentence; and made minor changes in style and phraseology.

81-924. (1805.88) Default in payment of purchase price—cancellation of certificate. If any purchaser or assignee of state land defaults for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate is subject to cancellation. The department shall mail to him at his last known post-office address a notice of default and pending cancellation. The notice shall give him sixty (60) additional days from the date of mailing the

notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make the payment within sixty (60) days, the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the department shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands, and shall be open to lease and sale. All buildings, fences, and other improvements placed thereon subsequent to the date of execution of the certificate of purchase shall be and remain the property of the purchaser named in the certificate of purchase or of his heirs, assigns, or devisees, and may be removed from the land at any time within ninety (90) days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the ninety (90) day period, they become the property of the state. In case of cancellation of certificate of purchase or surrender of certificate of purchase, and where the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate, or at the rate set by competitive bidding if such occurs.

History: En. Sec. 88, Ch. 60, L. 1927; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973.

Amendments

The 1973 amendment inserted "or as-

signee" near the beginning of the first sentence; substituted references to the department for references to the board and the commissioner; and made minor changes in style and phraseology.

81-926. (1805.90) Certificates may be assigned. Certificates of purchase may be assigned to a citizen of the United States, or to a person who has declared his intention to become a citizen, or to a corporation organized under the laws of this state. Such assignments shall be made on forms prescribed by the department, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one (1) copy to be filed and retained in the office of the department, and one (1) copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one (1) section; the assignee must in all respects possess the same qualifications as an original purchaser.

History: En. Sec. 90, Ch. 60, L. 1927; amd. Sec. 65, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted refer-

ences to the department for references to the commissioner; and made minor changes in style and phraseology.

81-927. (1805.91) Lost certificate. If a certificate of purchase to state lands is lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may apply to the board for the issuance of a substitute certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate, and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting

the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: En. Sec. 91, Ch. 60, L. 1927; amd. Sec. 66, Ch. 428, L. 1973.

stitute certificate" for "lien certificate" in two places; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "sub-

81-928. (1805.92) Land subject to taxation. (1) State lands purchased from the state are subject to taxation to the full value thereof. The department of revenue shall assess the purchaser for the full value of the land on the first day of January following the date of purchase. The holder of certificates of purchase to lands within irrigation districts is liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before January 15 of each year, the department shall furnish the department of revenue or its agent in each county with a complete list of all state lands sold in his county during the year ending on the previous December 31. This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein.

History: En. Sec. 92, Ch. 60, L. 1927; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973; amd. Sec. 7, Ch. 388, L. 1975.

Chapter 428, Laws of 1973, numbered the subsections; substituted "department" for "commissioner" in the first sentence of subsection (3); and made minor changes in style, phraseology and punctuation.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "assessor" in the second sentence of what is now subsection (1); and substituted "department of revenue or its agent in" for "county assessor of" in the first sentence of what is now subsection (3); both to implement article VII, section 3 of the 1972 constitution.

The 1975 amendment substituted "the first day of January" for "the first Monday of March" in subsection (1); substituted "on or before January 15" at the beginning of subsection (3) for "on or before March 15"; and substituted "ending on the previous December 31" at the end of the first sentence in subsection (3) for "ending on the first Monday of March of each year."

81-930. (1805.94) Lands reverting to state—procedure. If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973.

Neither amendatory act mentioned or incorporated the changes made by the other. Since the changes do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "assessor" in two places in order to implement article VII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted "title" for "act" near the beginning of the first sentence; substituted "department"

for "commissioner of state lands" in the middle of the first sentence; substituted "tax liens" for "taxes remaining unpaid" near the end of the section; deleted "for that and all previous years" from the end of the section; and made minor changes in style, phraseology and punctuation.

81-932. (1805.96) Patents, how executed. (1) The governor, and in his absence or inability, the lieutenant governor, shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for rights of way to the United States, reservation of all minerals in the land as provided in section 81-902, and all other reservations to which the particular land conveyed is subject. If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project." The deed or patent shall be attested by the secretary of state, countersigned by the commissioner of state lands, and have the great seal of the state and the seal of the board thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

(2) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued; the statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; amd. Sec. 69, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the sub-

sections; substituted "section 81-902" for "this act" near the end of the second sentence of subsection (1); and made minor changes in style and phraseology.

81-934 to 81-942. Repealed.**Repeal**

Sections 81-934 to 81-942 (Secs. 1 to 3, Ch. 106, L. 1945; Secs. 1 to 6, Ch. 196, L. 1947), relating to certain contracts exe-

cuted between 1923 and 1928, and authorizing the sale of a specific tract of land, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 10—INVESTMENTS**81-1001 to 81-1007.1, 81-1008. (930, 1805.98 to 1805.105) Repealed.****Repeal**

Sections 81-1001 to 81-1007.1, 81-1008 (Sec. 2, Ch. 47, L. 1903; Sec. 1, Ch. 11, L. 1921; Secs. 98 to 105, Ch. 60, L. 1927; Sec. 1, Ch. 26, L. 1931; Sec. 2, Ch. 139, L. 1933; Secs. 224, 225, Ch. 147, L. 1963; Sec.

31, Ch. 234, L. 1971; Sec. 1, Ch. 1, 2nd Ex. L. 1971; Sec. 42, Ch. 100, L. 1973), relating to investment of funds of the institutional permanent funds, were repealed by Sec. 9, Ch. 298, Laws 1973. For new law, see secs. 79-308 to 79-311.

81-1009 to 81-1014. (1805.106 to 1805.111) Repealed.**Repeal**

Sections 81-1009 to 81-1014 (Secs. 106 to 111, Ch. 60, L. 1927), relating to state

farm loans and mortgages, were repealed by Sec. 103, Ch. 326, Laws of 1974.

**CHAPTER 11—STATE LANDS AND INVESTMENTS—
MISCELLANEOUS PROVISIONS**

Section

- 81-1101. Acceptance of federal land grants.
- 81-1101.1. Board may accept federal facilities and installations—title in state.
- 81-1102. Gifts, donations, grants, legacies and devises to the state.
- 81-1103. Donations of land for forestry purposes.
- 81-1108, 81-1109. [Transferred.]
- 81-1110. Who may not buy or lease state lands.
- 81-1113. [Transferred.]
- 81-1115. State land equalization payments to counties—list of lands transmitted to department of revenue.
- 81-1116. Computation of state land equalization payment.
- 81-1117. Form to be completed by department of revenue—method of computation shown.
- 81-1118. County statement on equalization payments examined by department—claim filed with department of administration.
- 81-1119. Warrant for state land equalization payments to counties.
- 81-1120. County distribution of state land equalization payments.
- 81-1121. School district use of state land equalization proceeds.
- 81-1122. Reports by state treasurer.

81-1101. (1805.113) Acceptance of federal land grants. The state board of land commissioners may accept any grant of lands from the United States to the state made in carrying out the provisions of the Enabling Act and also any other grant for any special purpose that may be made by the United States to the state. Any acceptance by the board on behalf of the state, that has taken place prior to July 1, 1927, of lands granted by the United States to the state is hereby ratified.

History: En. Sec. 113, Ch. 60, L. 1927; amd. Sec. 70, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "The federal land grants made to the state of Montana through the so-called Enabling Act have already been accepted as a whole through the adoption of the state constitu-

tion and specifically by subdivision 7 of ordinance No. 1 thereof" from the beginning of the first sentence; substituted "July 1, 1927" for "this act" in the second sentence; deleted "confirmed and approved" from the end of the section; and made minor changes in style and phraseology.

81-1101.1. Board may accept federal facilities and installations—title in state. The board may on behalf of the state accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede sections 82-3101 through 82-3104.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "board"

for "state board of examiners" at the beginning of the section; and made minor changes in style and phraseology.

81-1102. (1805.114) Gifts, donations, grants, legacies and devises to the state. The state board of land commissioners is hereby authorized

and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies and devises having a value of not less than two hundred fifty dollars (\$250.00) from each person. All lands passing to the state under these provisions or through the operation of law, shall be managed as other state lands and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations. All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money, or the equivalent of money, shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this act. The provisions of this section shall apply to gifts, donations, grants, legacies and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: En. Sec. 114, Ch. 60, L. 1927;
amd. Sec. 43, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "for any purpose authorized by article XXI of the

constitution" from the end of the first sentence; and deleted "as provided by article XXI of the constitution" after "they were received" in the latter part of the third sentence.

81-1103. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes, and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History: En. Sec. 1, Ch. 159, L. 1937;
amd. Sec. 72, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in phraseology and punctuation.

81-1108, 81-1109. [Transferred.]

Compiler's Notes

Sections 73 and 74 of Ch. 428, Laws

1973, redesignated these sections as secs. 81-106 and 81-107.

81-1110. (1805.117) Who may not buy or lease state lands. It is unlawful for any member of the board, or any person appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or of any person connected with the department of state lands as an officer or employee, to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

History: En. Sec. 117, Ch. 60, L. 1927;
amd. Sec. 75, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of state lands" for "state land office" near the end of the section; and made minor changes in phraseology.

81-1113. [Transferred.]

Compiler's Notes

Section 76 of Ch. 428, Laws 1973, redesignated this section as sec. 81-108.

81-1115. State land equalization payments to counties—list of lands transmitted to department of revenue. The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue or its agent in each county in which the state has real property in excess of six per cent (6%) of the total land area of the county and from which the state derives grazing, agricultural or forest income. The statement shall contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

History: En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Title of Act

An act providing for reimbursement to counties for loss of revenue because of tax exempt status of state owned land in excess of six per cent (6%) of the total land area; providing for procedures

to effectuate this purpose; prescribing the duties of the commissioner of state lands and investments, county assessors and the state controller; limiting the maximum payments; and providing an effective date.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue or its agent in" for "county assessor of" in the first sentence in order to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted "department" for "commissioner of state lands and investments for the state of Montana" at the beginning of the first sentence; and made minor changes in style, phraseology and punctuation.

81-1116. Computation of state land equalization payment. The department of revenue shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by, and taxable to, a taxpayer of such county; provided that, if the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed twelve cents (\$.12) per grazing acre, thirty-five cents (\$.35) per agricultural acre, and twelve cents (\$.12) per forest acre. The average tax may be derived from the most recent biennial report of the state department of revenue. The total figure arrived at by this method shall be called the gross assessment figure. The county exemption factor shall be determined by dividing the percentage the state owned land bears to the total land area of the county into six per cent (6%). This quotient shall be multiplied by the gross assessment figure and the product is called the state exemption figure. The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: En. Sec. 2, Ch. 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

81-1117. Form to be completed by department of revenue—method of computation shown. The department shall provide a form to be followed and completed by the agent of the department of revenue in each county.

The agent shall, before October 1, make the computations required and submit to the department the completed form which shall show the computations and method used in arriving at the state land equalization payment.

History: En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "agent of the department of revenue in each county" for "county assessor" at the end of the first sentence; and substituted "agent" for "county assessor" at the beginning of the second sentence; both to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted references to the department for references to the commissioner of state lands and investments; and made minor changes in style and phraseology.

81-1118. County statement on equalization payments examined by department—claim filed with department of administration. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the changes do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "agent of the department of revenue" for "county assessor" in the first sentence in order to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted references to the department for references to the commissioner of state lands and investments at the beginning of the first and second sentences; substituted "department of administration" for "state controller" in the middle of the second sentence; and made minor changes in style and phraseology.

81-1119. Warrant for state land equalization payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment of administration" for "state controller" at the beginning of the section; and made minor changes in style and phraseology.

81-1120. County distribution of state land equalization payments. The county treasurer shall distribute the money received under this act within

their county as hereinafter provided; sixty per cent (60%) of total payment shall be broken down into cents per acre of total state owned land within the county, and apportioned between the elementary school districts in accordance with the amount of state owned land in each elementary district. Forty per cent (40%) shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967.

81-1121. School district use of state land equalization proceeds. The money received by any school district under sections 81-1115 through 81-1120 shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used, in accordance with the provisions of section 75-6915.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973.

the reference to section 75-6915 for a reference to section 75-3618 at the end of the section.

Amendments

The 1973 amendment substituted "sections 81-1115 through 81-1120" for "this act" in the first sentence; and substituted

Effective Date

Section 8 of Ch. 235, Laws 1967 read "This act is effective January 1, 1968."

81-1122. (1805.9) Reports by state treasurer. On or before the tenth day of each calendar month, the state treasurer shall report to the department the amount of money received by him during the preceding month from each source, except from the department, for each income fund and each permanent fund arising from a federal land grant or otherwise under the control of the board, the amount paid out from each income fund or permanent fund during the month and the object of such payment, and the balance uninvested in each fund. These reports shall be on such forms and contain such additional information the department prescribes and the board approves.

History: En. Sec. 9, Ch. 60, L. 1927; Sec. 81-205, R. C. M. 1947; redes. 81-1122 and amd. by Sec. 6, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section; substituted references to the department for references to the commissioner; and made minor changes in style and phraseology.

CHAPTER 13—REIMBURSEMENT OF FEDERAL GOVERNMENT FOR CERTAIN EMERGENCY CONSERVATION WORK

(Repealed—Section 116, Chapter 428, Laws of 1973)

81-1301. (1808.1) Repealed.

Repeal

Section 81-1301 (Sec. 1, Ch. 158, L. 1935), relating to reimbursement of the federal government for emergency con-

servation work resulting in profit to the state, was repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 14—STATE FORESTS—TIMBER SALES—FIREWARDENS

Section

- 81-1401. Classification of lands as state forests.
- 81-1404. Sale of timber—advertising for bids—purchaser's agreement.
- 81-1406. Breach of timber sale agreement.
- 81-1408. Duties concerning lumber cutting—scaling.

81-1409. Co-operation with owners and lessees.

81-1411. Duties of department of natural resources and conservation.

81-1412. Firewardens.

81-1413. Powers of firewardens.

81-1415. Duties of department of natural resources to protect state lands.

81-1401. (1830.1) Classification of lands as state forests. All lands at present owned by the state, and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant or devise, which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection, are hereby classified and designated "state forests," and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925; amd. Sec. 1, Ch. 145, L. 1949; amd. Sec. 1, Ch. 167, L. 1951; amd. Sec. 97, Ch. 253, L. 1974.

Amendments

The 1974 amendment deleted three provisos relating to property within the boundaries of Glacier National Park. For prior law, see parent volume.

81-1401.1, 81-1401.2. Repealed.

Repeal

Sections 81-1401.1 and 81-1401.2 (Secs. 1, 2, Ch. 114, L. 1953), relating to legislative approval of fair market value, and

exchange of lands with the United States government, were repealed by Sec. 108, Ch. 253, Laws of 1974.

81-1403. (1830.3) Repealed.

Repeal

Section 81-1403 (Sec. 3, Ch. 179, L. 1925; Sec. 1, Ch. 161, L. 1949; Sec. 1, Ch. 192, L. 1953; Sec. 1, Ch. 28, L. 1955; Sec. 1, Ch. 94, L. 1957; Sec. 5, Ch. 225, L. 1963;

Sec. 39, Ch. 177, L. 1965; Sec. 9, Ch. 237, L. 1967), relating to the appointment of a state forester, was repealed by Sec. 108, Ch. 253, Laws of 1974.

81-1404. (1830.4) Sale of timber—advertising for bids—purchaser's agreement. Under the direction of the state board of land commissioners, the department of natural resources and conservation may sell the timber crop and other crops of the forests, after examination, estimate, appraisal, and report and under such rules as may be established by the board. Timber proposed for sale in excess of 100,000 board feet shall be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale. In cases of emergency due to fire, insect, fungus, parasite, or blowdown, timber proposed for sale not in excess of 200,000 board feet may be advertised by invitation to bid for a period of not less than 10 days. The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder. Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

History: En. Sec. 4, Ch. 179, L. 1925; amd. Sec. 98, Ch. 253, L. 1974; amd. Sec. 1, Ch. 301, L. 1977.

Amendments

The 1974 amendment substituted "department of natural resources and con-

servation" throughout the section for "state forester"; and made minor changes in phraseology.

The 1977 amendment inserted the third sentence concerning emergency sales; and made minor changes in phraseology, punctuation and style.

81-1406. (1830.6) Breach of timber sale agreement. For breach of timber sale agreement, the department of natural resources and conservation may suspend cutting or removal of the timber, and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages, or it may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: En. Sec. 6, Ch. 179, L. 1925; amd. Sec. 99, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of natural resources and conservation" for "state forester"; and made minor changes in phraseology and punctuation.

81-1408. (1830.8) Duties concerning lumber cutting—scaling. The department of natural resources and conservation shall supervise all the management of timber before it is cut, and secure the most complete utilization of all forest products consistent with the current forest management practices. It shall instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and fix and establish the standard practice in timber sales administration. It shall require that each merchantable log be scaled by the Scribner decimal C. log rule at the small end on the average diameter inside bark taken to the nearest inch, and that deduction be made for any apparent defect, or it shall fix and determine converting factors and units of measure for all forest products, which shall be as nearly as practical equivalent to the Scribner decimal C. log scale. Records of converting factors, units of measure and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale and the name of the scaler. Where the volume of timber involved is not in excess of one million (1,000,000) board feet log scale, the department of natural resources and conservation may designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925; amd. Sec. 1, Ch. 40, L. 1945; amd. Sec. 1, Ch. 219, L. 1955; amd. Sec. 1, Ch. 145, L. 1963; amd. Sec. 100, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of natural resources and conservation" for "state forester" in the first and last sentences; and made minor changes in phraseology, punctuation and style.

81-1409. (1830.9) Co-operation with owners and lessees. For the purpose of more adequately promoting and facilitating the co-operation, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the department of natural resources and conservation may co-operate with owners or lessees of farm, range, forest, watershed or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural re-

sources existing or growing thereon; and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow.

History: En. Sec. 9, Ch. 179, L. 1925; amd. Sec. 1, Ch. 193, L. 1947; amd. Sec. 101, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" for "state board of forestry"; and made minor changes in phraseology.

81-1411. (1831) Duties of department of natural resources and conservation. The department of natural resources and conservation shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisement, and re-appraisement of state timberlands. It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state. It shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement, and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brushcover lands and prosecute for any violation of those laws. The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R. C. M. 1921; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969; amd. Sec. 102, Ch. 253, L. 1974; amd. Sec. 16, Ch. 397, L. 1977.

Amendments

The 1969 amendment substituted reporting requirements of section 82-4002 for former provision requiring annual reports in the fourth sentence.

The 1974 amendment substituted "department of natural resources and conservation" for "state forester"; deleted a sentence requiring reports as provided in section 82-4002; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted the last sentence for the former last two sentences which read: "It shall furnish notices, printed in large letters, calling attention to the danger from forest fires, and to the forest fire and trespass laws, and their penalties. These notices shall be posted by the fire warden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every post office in the forested region"; and made minor changes in punctuation.

81-1412. (1833) Firewardens. The department of natural resources and conservation shall appoint firewardens in such number and localities as it considers necessary. Every sheriff, undersheriff, deputy sheriff, state fish and game warden, the state fish and game director, members of the board of natural resources and conservation, the director of the department of natural resources and conservation and employees of the department designated by him, officers of organized forest protection districts, members of the Montana highway patrol, officers of the national park service residing in Montana, and officers of the bureau of Indian affairs are firewardens, but may not receive any additional compensation by reason of the duties hereby imposed. The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsi-

bilities of firewardens, may be appointed firewardens. The firewardens shall promptly report all fires to the department of natural resources and conservation, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909; re-en. Sec. 1833, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1955; amd. Sec. 103, Ch. 253, L. 1974; amd. Sec. 17, Ch. 397, L. 1977.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" for "state forester" in the first sentence and for "state board of forestry" in the last sentence; substituted "state fish and game warden, and the state fish and game director" in the second sentence for "game warden [director], and deputy game warden [warden]"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment inserted "firewardens" after "appoint" in the first sentence; deleted "public spirited citizens to

act as volunteer firewardens" at the end of the first sentence; inserted "members of the board of natural resources and conservation, the director of the department of natural resources and conservation and employees of the department designated by him, officers of organized forest protection districts, members of the Montana highway patrol, officers of the national park service residing in Montana, and officers of the bureau of Indian affairs" in the second sentence; deleted "and they shall be considered paid firewardens under the terms of this act" at the end of the second sentence; substituted "firewardens" at the end of the third sentence for "volunteer firewardens, and have all the powers given to firewardens by this act"; and made minor changes in phraseology and punctuation.

81-1413. (1834) Powers of firewardens. All firewardens have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and a firewarden is not liable for civil action for trespass committed in the discharge of his duties. A firewarden who has information which shows, with reasonable certainty, that a person has violated any provision of those forest laws, shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of a paid firewarden to comply with the duties prescribed in this act is a misdemeanor, and punishable by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or imprisonment in the county jail for not less than ten (10) days nor more than twelve (12) months, or by both such fine and imprisonment; and upon his conviction, the district court wherein he is convicted shall immediately declare his office vacant, and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909; re-en. Sec. 1834, R. C. M. 1921; amd. Sec. 104, Ch. 253, L. 1974.

ester" before "All firewardens" at the beginning of the section; and made minor changes in phraseology, punctuation and style.

Amendments

The 1974 amendment deleted "state for-

81-1415. (1836) Duties of department of natural resources to protect state lands. The department, under such rules as the state board of land commissioners may provide, shall protect the natural resources of the state and especially the natural resources owned by the state from destruction by fire and, for such purpose, in emergencies, may employ men and incur other expenses when necessary.

History: En. Sec. 14, Ch. 147, L. 1909; re-en. Sec. 1836, R. C. M. 1921; amd. Sec. 1, Ch. 220, L. 1955; amd. Sec. 105, Ch. 253, L. 1974; amd. Sec. 18, Ch. 397, L. 1977.

Amendments

The 1974 amendment substituted "department of natural resources and conservation" for "state forester" and "assistant forester"; and made minor changes in phraseology.

The 1977 amendment deleted "of natural resources and conservation and all firewardens (except volunteer firewardens)" after "The department" at the beginning of the section; substituted "natural resources" in two places for "timber"; and made minor changes in punctuation.

Repealing Clause

Section 19 of Ch. 397, Laws 1977 read "Sections 28-125, 28-128, and 28-604, R. C. M. 1947, are repealed."

CHAPTER 15—PORTABLE SAWMILLS ON FOREST LAND— LICENSE AND REGULATION

Section

81-1501 to 81-1504. [Transferred.]

81-1506. [Transferred.]

81-1501 to 81-1504. [Transferred.]

Compiler's Notes

Sections 107 to 110, Ch. 253, Laws of

1974 renumbered these sections as secs. 28-802 to 28-805.

81-1505. (1839.5) Repealed.

Repeal

Section 81-1505 (Sec. 5, Ch. 124, L. 1931), relating to the definition of a port-

able sawmill, was repealed by Sec. 108, Ch. 253, Laws of 1974.

81-1506. [Transferred.]

Compiler's Notes

Section 111, Ch. 253, Laws of 1974 renumbered this section as sec. 28-806.

CHAPTER 16—TIMBER SALES—GENERAL PROVISIONS

Section

81-1601. Sale of timber—fees for brush disposal and timber stand improvement.

81-1601. (1872) Sale of timber—fees for brush disposal and timber stand improvement. (1) The state board of land commissioners may sell timber on state lands, at such price per thousand feet as in its judgment is in the best interest of the state, but not otherwise; but no such sale of live timber shall be less than three dollars (\$3) per thousand feet for white pine, yellow pine, and spruce or less than one dollar and a half (\$1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the board prescribes; in all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale is granted, the timber shall be estimated and appraised under the direction of the department of natural resources and conservation, upon the request and subject to the approval of the board. These estimates and appraisals shall show as nearly as possible the amount and values per thousand feet of all merchantable

timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed.

(2) The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the department of natural resources and conservation.

History: Ap. p. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R. C. M. 1921; amd. Sec. 1, Ch. 132, L. 1933; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department of natural resources and conservation" for "state forester" in the third sentence of subsection (1) and at the end of subsection (2); and made minor changes in style and phraseology.

81-1604. (1881) Repealed.

Repeal

Section 81-1604 (Sec. 9, p. 49, L. 1893; Sec. 61, Ch. 147, L. 1909; Sec. 9, Ch. 118,

L. 1911; Sec. 83, Ch. 428, L. 1973), relating to state brand on timber, was repealed by Sec. 1, Ch. 464, Laws 1977.

CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF

Section	
81-1702.	Area to be leased—limitations—term of leases—operating agreements.
81-1702.1.	Rentals—filing fee—contiguity.
81-1702.2.	Power to terminate lease—grounds.
81-1704.	Royalty—time for payment—computation—minimum royalty.
81-1705.	Report of lessees.
81-1706.	Work required to hold lease—extension of time—modification of existing leases.
81-1712.	Disposition of royalties and other moneys.
81-1716.	Assignments of leases.
81-1717.	Removal of property of lessee at end of term—agreement with new lessee concerning property.
81-1718.	Surrender of lease.
81-1720.	State officers not to be interested in leases.
81-1726.	Term of lease—renewal.
81-1728.	Bond of lessees.
81-1729.	Cancellation and forfeiture of lease—notice—hearings.
81-1730.	Rentals—disposition of funds.
81-1731.	Termination and surrender of lease.

81-1702. (1882.2) Area to be leased—limitations—term of leases—operating agreements. (1) An oil or gas lease issued on state lands may not embrace more than six hundred forty (640) acres, except that any section surveyed by the United States which contains more than six hundred forty (640) acres may be included under one (1) lease. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment, or succession, will, judgment, decree, or otherwise through the operation of law, more than one (1) oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

(2) All state oil and gas leases shall be granted for a primary term or period of ten (10) years, and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other

obligations are fully kept and performed by the lessee; nothing in this section amends or repeals sections 81-1703 or 81-1706.

If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

(3) Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases; but no such operating agreements are in any way binding upon the state until filed with the board and approved by it; and no such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

(4) Nothing contained in this section or in prior related acts prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and from modifying leases with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements and such unit plans of operation; however, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

(5) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement, are considered to be produced from the state lands therein, within the meaning of this chapter.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973.

first paragraph of subsection (2), was repealed by Sec. 116, Ch. 428, Laws 1973.

Amendments

The 1973 amendment inserted "state oil and gas" at the beginning of subsection (2); and made minor changes in style, phraseology and punctuation.

Compiler's Notes

Section 81-1703, cited at the end of the

81-1702.1. Rentals—filing fee—contiguity. (1) The annual money rentals to be paid to the state for oil and gas leases issued on and after July 1, 1975, shall be set by the board but may not be less than one dollar and fifty cents (\$1.50) for each acre of land leased, except that in addition to the sum of one dollar and fifty cents (\$1.50) per acre, the rental for the first year of the lease shall also include any sum in excess of one dollar and fifty cents (\$1.50) per acre offered and accepted for the first year's rental; however, this annual rental shall in no case be less than one hundred dollars (\$100) a year.

(2) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment the lease terminates.

(3) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than one (1) square mile.

(4) In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within thirty (30) days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973; amd. Sec. 1, Ch. 136, L. 1974; amd. Sec. 1, Ch. 379, L. 1975.

Amendments

The 1971 amendment deleted the filing fee of \$5.00 for each oil and gas lease issued from the second paragraph; granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners; and made a minor change in style.

The 1973 amendment inserted former subsection (1); numbered the remaining subsections; substituted "issued on and after March 3, 1955" for "hereafter made under the provisions of chapter 17 of Title 81, R. C. M. 1947, and acts amendatory thereto" in subsection (2) (now subsection (1)); deleted from subsection (3) (now subsection (2)) a first sentence providing for filing fees on issuance and assignment of leases; deleted "Such filing fee and" from the beginning of the first sentence of subsection (3) (now subsection (2)); substituted "issued after March 3, 1955, is surrendered" for "hereafter issued shall be

surrendered" near the beginning of subsection (5) (now subsection (4)); and made minor changes in phraseology and style.

The 1974 amendment substituted "due and payable before the beginning of such subsequent year" in the second sentence of subsection (3) (now subsection (2)) for "due and payable thirty (30) days before the beginning of such subsequent year."

The 1975 amendment deleted the former subsection (1), which read: "The minimum annual money rentals to be paid to the state for oil and gas leases issued before March 3, 1955, shall be seventy-five cents (\$.75) for each acre of land leased; however, this rental shall in no case be less than fifty dollars (\$50) per year"; redesignated subsections (2) to (5) as subsections (1) to (4); substituted in subsection (1) "after July 1, 1975" for "after March 3, 1955"; inserted "set by the board but may not be less than" after "shall be" in subsection (1); increased the minimum rental from \$1.00 to \$1.50 per acre in subsection (1); inserted "annual" before "rental" near the end of subsection (1); and increased the yearly rental from \$50 to \$100.

81-1702.2. Power to terminate lease—grounds. In every oil and gas lease granted after March 3, 1955, under this chapter there shall be reserved to the board full power to declare termination of the lease at the end of the second year or any subsequent year of the primary term of the lease upon failure of the lessee to either (a) commence the drilling of a well for oil and gas upon the leased premises or (b) pay a delay drilling penalty as follows: for the sixth year of the lease one dollar and twenty-five cents (\$1.25) per acre per year, and for the remainder of the primary term of the lease an amount per acre per year as the board may, in its discretion, determine. Notice of that determination shall be given to the lessee, and if the lessee applies for a hearing thereon within ten (10) days after receipt of the notice, the determination shall become final only after such

hearing has been held. This annual delay drilling penalty shall be paid each year in advance. If a well for oil and gas is commenced, the drilling of the well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas. If the first well drilled is a dry hole, and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes the payments of penalties in the amounts provided in this section. Upon the resumption of the payment of such delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973.

"granted after March 3, 1955" for "hereafter granted" near the beginning of the section; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted

81-1702.3. Repealed.

Repeal

Section 81-1702.3 (Sec. 3, Ch. 161, L. 1955), exempting subsequent leases from

secs. 81-1703 and 81-1706, was repealed by Sec. 116, Ch. 428, Laws 1973. For present law, see sec. 81-1706 (2).

81-1702.4. Repealed.

Repeal

Section 81-1702.4 (L. 1965, Ch. 251, Sec. 2), relating to reservation of royalties to state in oil and gas leases granted by

state, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

81-1703. (1882.3) Repealed.

Repeal

Section 81-1703 (Sec. 3, Ch. 108, L. 1927; Sec. 13, Ch. 22, L. 1971), relating to rentals, filing fees, contiguity of land

leased and cancellation and renewal of leases, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-1704. (1882.4) Royalty — time for payment — computation — minimum royalty. In every oil and gas lease granted by the state under this chapter, and acts amendatory thereto, there shall be reserved to the state as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby, and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the state board of land commissioners at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease; provided that such royalty reservation shall be set by the board but may not be less than twelve and one-half per centum (12½%) on gas, and not less than twelve and one-half per centum (12½%) on that portion of the average production of oil or casing-head gasoline for each producing well not exceeding three thousand (3,000) barrels for the calendar month; provided, further, that the royalty on gas, including casing-head gas and all gaseous substances, while the same

is not sold or used off the premises shall be at the rate of four hundred dollars (\$400) per well each year or the amount of the annual rental provided in said lease, in lieu of such per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease, and as long as such leased lands contain a well capable of such production and such payment is made the lease shall be considered as a producing lease under the lease terms. Such lease shall provide for the rendering of payment of such royalty on all oil and gas produced and saved and sold or used off the premises in the following manner and upon the following terms:

The lessee shall pay to the state, in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipeline or storage tank to the credit of the lessee, plus any bonus actually paid, or agreed to be paid, to the lessee, for such oil or gas; or, at the option of the state, exercised in writing by the state board of land commissioners not oftener than every thirty (30) days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions, into the pipeline to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927; amd. Sec. 1, Ch. 61, L. 1951; amd. Sec. 1, Ch. 103, L. 1965; amd. Sec. 2, Ch. 379, L. 1975.

paragraph; inserted in the same sentence "not less than" after "on gas, and"; and increased the royalty rate in the proviso to the first sentence in the first paragraph from \$200 to \$400 per well.

Amendments

The 1975 amendment inserted "set by the board but may not be less than" after "royalty reservation shall be" near the middle of the first sentence in the first

Effective Date

Section 3 of Ch. 379, Laws 1975 read "This act is effective April 1, 1975."

81-1705. (1882.5) Report of lessees. On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof. The report shall be accompanied by payment of the amount due the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser thereof; however, where the amount of royalty due from any lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

History: En. Sec. 5, Ch. 108, L. 1927; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner of state lands; and made minor changes in style and phraseology.

81-1706. (1882.6) Work required to hold lease—extension of time—modification of existing leases. (1) In every oil and gas lease granted by the state there shall be reserved to the board full power to declare termination of the lease upon failure of the lessee to drill at last one well upon the leased premises (not less than six (6) inches in diameter to the

depth of at least one thousand (1,000) feet, unless oil or gas in commercial quantity and of commercial quality shall be encountered at a shallower depth) within two (2) years after the date of the lease. If oil or gas in commercial quantities is not found at the depth of one thousand (1,000) feet or less, the lessee shall continue drilling with diligence to such depth as necessary to make reasonable test for oil or gas. The board may, in its discretion, upon satisfactory showing by the lessee, extend the time for the commencement or completion of such drilling obligation from year to year, not exceeding ten (10) years after the date of the lease, upon such terms and considerations the board determines, and upon payment to the department of such penalty, if any, the board in its discretion determines, for each year beginning with the third year, payable each year in advance.

(2) This section does not apply to leases issued after March 2, 1955.

History: En. Sec. 6, Ch. 108, L. 1927; amd. Sec. 2, Ch. 171, L. 1933; amd. Sec. 88, Ch. 428, L. 1973.

Amendments

The 1973 amendment designated the first paragraph as subsection (1); substituted

references to the department for references to the commissioner of state lands and investments; deleted a second paragraph permitting modification of pre-existing leases; added subsection (2); and made numerous minor changes in style, phraseology and punctuation.

81-1709. (1882.9) Repealed.

Repeal

Section 81-1709 (Sec. 9, Ch. 108, L. 1927; Sec. 1, Ch. 186, L. 1957), relating

to bonds of lessees of state oil and gas leases, was repealed by Sec. 1, Ch. 164, Laws 1969.

81-1712. (1882.12) Disposition of royalties and other moneys. All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows: All fees and penalties shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income the same as all other receipts from such lands. All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state, or for any state institution, shall be credited, one-half ($\frac{1}{2}$) to the state general fund and one-half ($\frac{1}{2}$) to the state permanent revenue fund.

History: En. Sec. 12, Ch. 108, L. 1927; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973.

Amendments

Chapter 100, Laws of 1973, deleted "as defined by article XXI of the constitution" from the end of the section.

Chapter 428, Laws of 1973, made the same deletion as did Ch. 100; substituted "department" for "register of state lands" near the beginning of the first sentence; and made changes in phraseology, style and punctuation.

81-1713, 81-1714. (1882.13, 1882.14) Repealed.

Repeal

Sections 81-1713, 81-1714 (Secs. 13, 14, Ch. 108, L. 1927), accepting an amendment

to the Enabling Act, and relating to the correction of errors, were repealed by Sec. 116, Ch. 428, Laws 1973.

81-1716. (1882.16) Assignments of leases. The assignment of any oil and gas lease issued under this chapter, either in whole or as to subdivisions of land embracing not less than forty (40) acres covered thereby, made to an assignee qualified as provided herein, is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings. All other assignments of oil and gas leases issued under this chapter or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; amd. Sec. 90, Ch. 428, L. 1973.

office of the register of state lands" in the second sentence; deleted "and bond" following "required fees" in the second sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "filed with the department" for "filed in the

81-1717. (1882.17) Removal of property of lessee at end of term—agreement with new lessee concerning property. (1) Upon the termination for any cause of any lease issued under this chapter, the former lessee has six (6) months after the date of the termination to remove all machinery, fixtures, improvements, buildings and equipment belonging to him on the premises, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to such casing, equipment, and apparatus, any succeeding lessee, or in the event there is no succeeding lessee, the state, wishing to have such property left upon the premises, shall pay the reasonable value thereof to the former lessee. If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment, and apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three (3) appraisers, one (1) of whom shall be chosen by the successful bidder, one (1) by the former lessee, and the third by the two (2) so chosen. Its appraisal shall be reported to the respective parties in writing, and is final and conclusive.

(2) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises, is fixed, in the manner provided in this section, and has been paid to him in cash. During the time the former lessee remains in such possession, he may retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or other bidder not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of his property from the lands.

History: En. Sec. 17, Ch. 108, L. 1927;
amd. Sec. 91, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, phraseology and punctuation.

81-1718. (1882.18) Surrender of lease. The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished, without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927;
amd. Sec. 92, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "de-

partment" for "register of state lands"; deleted a second sentence permitting exchange of pre-existing leases; and made minor changes in style and phraseology.

81-1720. (1882.20) State officers not to be interested in leases. It is unlawful for any officer or employee of any agency of the executive department of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof, to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927;
amd. Sec. 4, Ch. 171, L. 1933; amd. Sec. 93,
Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "officer or employee of any agency of the execu-

tive department" for "member of the state board of land commissioners, for any of the officers or employees of the department of state lands and investments, and for any officer or employee of any other department or office"; and made minor changes in phraseology and punctuation.

81-1724. (1882.24) Repealed.

Repeal

Section 81-1724 (Sec. 24, Ch. 108, L.

1927), repealing conflicting law, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-1726. Term of lease—renewal. All leases issued under section 81-1725 may be granted for a period not exceeding twenty (20) years, and the lessee has a preferential right to renew the lease for an additional period not exceeding twenty (20) years subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955;
amd. Sec. 94, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "under section 81-1725" for "hereunder"; and made minor changes in style and phraseology.

81-1728. Bond of lessees. A lessee under section 81-1725 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of twenty thousand dollars (\$20,000) is required under any one (1) lease.

History: En. Sec. 4, Ch. 213, L. 1955;
amd. Sec. 95, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "A lessee under section 81-1725 shall furnish"

for "The state board of land commissioners shall require lessees, to furnish" at the beginning of the section; substituted "a form prescribed by the board" for "sum and

substance prescribed by law or by regulations of the board"; and made minor changes in style and phraseology.

81-1729. Cancellation and forfeiture of lease—notice—hearings. All leases granted under section 81-1725 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default. The board may order and hold hearings on any matter or question involving leases issued under section 81-1725, under such rules and regulations as it adopts; any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to section 81-1725 for references to "this act" in two places; substituted "the

department" for "the state" following "after written notice from" in the first sentence; substituted "department" for "board" near the end of the section; and made minor changes in style and phraseology.

81-1730. Rentals—disposition of funds. All rentals collected for or under leases issued under section 81-1725 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "sec-

tion 81-1725" for "the provisions of this act"; substituted "department" for "commissioner of state lands and investments"; and made a minor change in phraseology.

81-1731. Termination and surrender of lease. (1) The lessee may, at the termination of any rental year, by giving to the department thirty (30) days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

(2) Upon the termination for any cause of any lease issued under section 81-1725, the lessee has six (6) months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department" for

"commissioner of state lands and investments" in subsection (1); substituted "under section 81-1725" for "pursuant to this act" at the beginning of subsection (2); and made minor changes in style and phraseology.

CHAPTER 20—WATER FOR STATE LANDS

Section

81-2009. [Transferred.]

81-2018. Appropriation of water by state.

81-2009. [Transferred.]**Compiler's Notes**

Section 112, Ch. 253, Laws of 1974 re-numbered this section as sec. 89-142.

81-2018. (1965) Appropriation of water by state. The state board of land commissioners may, through the department of natural resources and conservation, at its discretion, appropriate any available waters for use upon state lands, and authorize the construction of irrigation works for these lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals.

History: En. Sec. 2, Ch. 85, L. 1905; re-en. Sec. 2254, Rev. C. 1907; re-en. Sec. 1965, R. C. M. 1921; amd. Sec. 3, Ch. 280, L. 1965; amd. Sec. 113, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of natural resources and conservation" for "state water conservation board" in the first sentence; deleted from the last sentence "and said water right laws are hereby made available and may be applied by said board or its agent"; and made minor changes in phraseology.

CHAPTER 22—EXCHANGE OF TIMBERED, CUT OR BURNED OVER LANDS**Section**

- 81-2201. Exchange of timbered, cut over or burned over lands.
- 81-2202. Department of natural resources and conservation to investigate.
- 81-2203. Investigation and findings concerning exchange of land.
- 81-2204. Hearing concerning exchange—notice—final order.
- 81-2205. Rules and regulations shall be made by board.

81-2201. (1995.1) Exchange of timbered, cut over or burned over lands. The board of land commissioners may accept on behalf of the state title in fee simple to any lands, timbered or from which the timber has been cut or burned, and in exchange therefor may convey not to exceed an equal value of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in section 81-1401 and section 81-903, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

History: En. Sec. 1, Ch. 180, L. 1931; amd. Sec. 99, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, phraseology and punctuation.

81-2202. (1995.2) Department of natural resources and conservation to investigate. When a proposal for an exchange is made, and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department of natural resources and conservation, and that department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

History: En. Sec. 2, Ch. 180, L. 1931; amd. Sec. 100, Ch. 428, L. 1973.

partment of natural resources and conservation" for "state forester"; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "de-

81-2203. (1995.3) Investigation and findings concerning exchange of land. The department of natural resources and conservation shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal including its reasons therefor in writing. If the board, after considering the report and recommendation and making such further investigation as it considers advisable, is of the opinion that the exchange is in the public interest, the board shall consider the entire matter and make findings and conclusions concerning the proposal and make an order rejecting the proposal and dismiss the same, or if in the judgment of the board the exchange is in the public interest and should be made, the order shall so state and shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931; amd. Sec. 101, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "The department of natural resources and con-

servation" for "the state forester" at the beginning of the section; deleted "when-ever any proposal of exchange hereunder has been referred to him" before "shall" in the first sentence; and made minor changes in style and phraseology.

81-2204. (1995.4) Hearing concerning exchange—notice—final order.
(1) If the state board approves a proposal for exchange, the department of state lands shall publish at least once in some newspaper of general circulation in each county in which any of the lands involved are located, a notice stating in general terms the proposal and describing the lands involved and ownership thereof. The notice shall fix a day not less than twenty (20) and not more than sixty (60) days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

(2) Within ten (10) days after the conclusion of the hearing the board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange.

History: En. Sec. 4, Ch. 180, L. 1931; amd. Sec. 102, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the sub-

sections; substituted references to the department of state lands for references to the commissioner of state lands; and made minor changes in style and phraseology.

81-2205. (1995.5) Rules and regulations shall be made by board. The board shall adopt and promulgate such rules, regulations, and methods of procedure affecting or touching the exchanges of lands under this chapter, as in its judgment seems advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931;
amd. Sec. 103, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

CHAPTER 23—CERTAIN STREAM AND LAKE BEDS AND
ISLANDS PROPERTY OF STATE

Section

81-2302. Administration of lands by the state of Montana.

81-2303. Survey of lands.

81-2305. Determining title to stream beds, etc.

81-2302. Administration of lands by the state of Montana. The board shall lease or sell these lands in the same manner as other school lands of the state are leased and sold. The board may sell or lease these lands without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in section 81-2303. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

History: En. Sec. 2, Ch. 36, L. 1937;
amd. Sec. 104, Ch. 428, L. 1973.

tion 81-2303" for "hereinafter directed" at the end of the second sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "in sec-

81-2303. Survey of lands. If the board considers it necessary that any of the lands mentioned in section 81-2301 be surveyed, it shall have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, or if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys, and the county surveyor, or other surveyor appointed shall make an actual survey thereof establishing four (4) corners of every quarter section and connecting the same with a United States survey, and within thirty (30) days after such survey file with the county clerk and recorder of that county a copy under oath of his field notes and plat and a duly certified copy of his field notes and plat with the department. For the services required in connection with the survey the county surveyor or other surveyor appointed is entitled to fees as prescribed in section 25-235. Such fees shall be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937;
amd. Sec. 105, Ch. 428, L. 1973.

partment" for "commissioner of state lands and investments" at the end of the second sentence; and made minor changes in style and phraseology.

Amendments

The 1973 amendment substituted "de-

81-2304. Repealed.

Repeal

Section 81-2304 (Sec. 3, Ch. 36, L. 1937), confirming prior leases and sales of lands,

was repealed by Sec. 116, Ch. 428, Laws 1973.

81-2305. Determining title to stream beds, etc. The board may take all proper proceedings for the purpose of determining the title to the beds

of lakes and other bodies of water and of streams within the state, and to that end may bring or defend suits or other proceedings in court, or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937;
Sec. 81-614, R. C. M. 1947; redes. 81-2305
and amd. by Sec. 46, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section and made minor changes in style and phraseology.

CHAPTER 24—DEVELOPMENT OF STATE LAND RESOURCES

Section

- 81-2401. Policy of state.
- 81-2402. Definition of terms.
- 81-2403. Development account in earmarked revenue fund—purposes for which used.
- 81-2404. Restriction on use of income from school and institutional lands.
- 81-2405. Deductions from income for development account—maximum percentage.
- 81-2406. Crediting of deductions from land income.
- 81-2407. Investment of moneys in development account.
- 81-2408. Rules and regulations.

81-2401. Policy of state. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system and other institutions benefiting therefrom and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967.

Title of Act

An act relating to lands owned by the state of Montana; creating a resource development account in the earmarked revenue fund for the purpose of developing state-owned lands to increase the

revenue therefrom for the support of the common schools and other institutions and objects for which the lands are held in trust; and authorizing allowances from the income from the lands for the resource development account in the earmarked revenue fund.

81-2402. Definition of terms. Unless the context requires otherwise, in this chapter:

(1) "Account" means the resource development account in the earmarked revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund.

History: En. Sec. 2, Ch. 295, L. 1967;
Sec. 106, Ch. 428, L. 1973.

divisions; deleted definitions of "department" and "board"; and made a minor change in phraseology.

Amendments

The 1973 amendment numbered the sub-

81-2403. Development account in earmarked revenue fund—purposes for which used. A resource development account in the earmarked revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure, in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institu-

tions and objects for which the lands are held in trust. The developments contemplated may include those projects that will develop or conserve the various state land resources including: water, both surface and underground, grazing land, agricultural land and timberland to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board of land commissioners are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967;
amd. Sec. 107, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-2404. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands, shall be expended by the department of state lands solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust; provided, however, that if the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967;
amd. Sec. 1, Ch. 180, L. 1973; amd. Sec.
108, Ch. 428, L. 1973.

section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 180 and once by Ch. 428. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes do not appear to conflict the compiler has made a composite

Amendments

Chapter 180, Laws of 1973, added the proviso to the first sentence; and added the second sentence.

Chapter 428, Laws of 1973, inserted "of state lands" following "shall be expended by the department" in the first sentence.

81-2405. Deductions from income for development account—maximum percentage. The board shall determine the amount or percentage of income, not to exceed two and one-half per cent ($2\frac{1}{2}\%$) which is necessary to achieve the purposes of this chapter, and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this chapter.

History: En. Sec. 5, Ch. 295, L. 1967;
amd. Sec. 109, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "chapter" for "act" in the middle and at the end of this section.

81-2406. Crediting of deductions from land income. All deductions from gross proceeds made in accordance with section 81-2405 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973.

feeted hereby" following "balance of the proceeds"; and made minor changes in style, phraseology and punctuation.

Amendments

The 1973 amendment deleted "not af-

81-2407. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973.

Amendments

The 1973 amendment inserted "of investments" folowing "The board."

81-2408. Rules and regulations. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this chapter.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "chapter" for "act"; and made a minor change in phraseology.

"It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Separability Clause

Section 9 of Ch. 295, Laws 1967 read

CHAPTER 25—PRESERVATION OF ANTIQUITIES

Section

- 81-2501. **Short title.**
- 81-2502. **Purpose of act.**
- 81-2503. **Definitions.**
- 81-2504. **Registration of sites and objects on state land—protection.**
- 81-2505. **Permit to excavate, remove or restore registered site or object.**
- 81-2506. **Distribution of collections—loans only.**
- 81-2507. **State historical register.**
- 81-2508. **Agreements with private owners.**
- 81-2509. **Co-operation with governmental units.**
- 81-2510. **Prevention of waste, destruction or removal.**
- 81-2511. **Violation as misdemeanor—penalty.**
- 81-2512. **Report of discovered sites or objects—preservation.**
- 81-2513. **Advisory council.**
- 81-2514. **Act controlling.**

81-2501. Short title. This act shall be known as the "State Antiquities Act."

History: En. Sec. 1, Ch. 502, L. 1973.

Title of Act

An act providnig for the identification, acquisition, restoration, enhancement, preservation and administration of historic, paleontological, archaeological, and cultural sites and objects, and providing for

their use and enjoyment by the people; providing for a permit system for excavation of sites; providing penalties for violation of this act; providing that if other laws conflict with this act that this act shall control; and providing an effective date.

81-2502. Purpose of act. The purpose of this act is to provide a method of identification, acquisition, restoration, enhancement, preservation, conservation and administration of the historic, archaeological, paleontological,

scientific, and cultural sites and objects of the state of Montana, and for their use and enjoyment by the people, and for the people's health and welfare.

History: En. Sec. 2, Ch. 502, L. 1973.

81-2503. Definitions. As used in this act:

- (1) "Society" means the Montana historical society.
- (2) "Board" means the state board of land commissioners.
- (3) "Historical" means after the advent of white man into Montana.
- (4) "Prehistorical" means before the advent of white man into Montana.

(5) "Paleontological" means noncultural prehistorical material of a geological nature such as fossilized plants and animals.

(6) "Site" means any historic, prehistoric, archaeologic, paleontologic, scientific, architectural, or cultural site upon lands subject to this act.

(7) "Object" means any historic, prehistoric, archaeologic, paleontologic, scientific, architectural, or cultural object or cluster of objects or materials, buildings, structures, or combinations thereof.

(8) "Registered site" means any site registered by the society as provided in this act or covered by cooperative agreement under 81-2508.

(9) "Registered objects" mean any object registered by the society as provided in this act or covered by cooperative agreement under 81-2508.

(10) "Person" means any individual, partnership, association, society, institute, corporation or the agents thereof; the singular includes the plural.

History: En. Sec. 3, Ch. 502, L. 1973; amd. Sec. 1, Ch. 440, L. 1977.

Amendments

The 1977 amendment deleted a former subdivision (1) reading "Department" means the state fish and game department

of the state of Montana"; redesignated former subdivisions (2) through (11) as subdivisions (1) through (10); inserted "architectural" in subdivisions (6) and (7); substituted "society" in subdivisions (8) and (9) for "department"; and made minor changes in phraseology and style.

81-2504. Registration of sites and objects on state land—protection.

The board is authorized on the recommendation of the society to designate for registration by the society sites and objects situated on land under the control of the state of Montana. The board may withdraw or reserve, at any time, sufficient state land administered by the board as may be necessary for the proper care and management of such sites and objects. No state land may be sold nor any development shall be allowed which will disturb the registered site or registered object unless it is protected or excavated in accordance with this act. The use of state land for the care and management of such sites and objects is hereby declared by the legislature to be a worthy object of the trust as specified in section 81-103. The board is authorized to take adequate steps to protect such sites and objects.

History: En. Sec. 4, Ch. 502, L. 1973; amd. Sec. 2, Ch. 440, L. 1977.

Amendments

The 1977 amendment deleted "depart-

ment and" before "society to designate" in the first sentence; and substituted "society" after "registration by the" in the first sentence for "department."

81-2505. Permit to excavate, remove or restore registered site or object.

No person may excavate, remove or restore any registered site or registered object without first obtaining a permit from the society. Said permits are to be granted only after careful consideration of the application for a permit, and be subject to the strict compliance with the following guidelines:

(a) Permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific or educational institutions, societies or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit shall be granted unless the society is satisfied that the applicant or applicants possess the necessary qualifications to guarantee the proper excavation of those sites and objects which may add substantially to man's knowledge about Montana and its antiquities.

(b) The permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the society which shall in turn submit the report to an appropriate repository. The society shall determine the appropriate time period allowable between all work undertaken, and submission of the summary report.

(c) Permits will be preferentially granted to resident persons unless in the event that a state person is unavailable, unqualified, or uninterested in the work proposed for investigation. In the event that a permit is granted to a nonstate person, there must be provision that removed objects may not leave or must revert to the state of Montana, provided that all specimens so collected shall be and remain the property of the state of Montana, and provided further that the society may give permission for the loan of such materials for scientific or educational purposes.

History: En. Sec. 5, Ch. 502, L. 1973; amd. Sec. 3, Ch. 440, L. 1977.

Amendments

The 1977 amendment substituted "so-

ciety" in the first sentence and in subdivisions (a) and (b) for "department"; and deleted "the department and" before "the society may give permission" near the end of subdivision (c).

81-2506. Distribution of collections—loans only. The society shall supervise the distribution of all collections made under the provisions of this act and shall distribute material from such collections on loan only.

History: En. Sec. 6, Ch. 502, L. 1973; amd. Sec. 4, Ch. 440, L. 1977.

Amendments

The 1977 amendment deleted "The department and" before "society" at the beginning of the section.

81-2507. State historical register. The society is authorized and directed to compile and keep a register of all registered sites and registered objects. This register shall be known as the state historical register.

History: En. Sec. 7, Ch. 502, L. 1973; amd. Sec. 5, Ch. 440, L. 1977.

Amendments

The 1977 amendment substituted "society" for "department."

81-2508. Agreements with private owners. The society may enter into cooperative agreements with private landowners or the owners of objects to

preserve, mark, maintain, excavate, or otherwise deal with such sites and objects upon such terms as may be agreed upon by the society and the private owners. The agreements may contain a clause that the sites and objects shall be registered under this act and also a provision that the state of Montana shall indemnify the owner for any liability, including court costs and attorney's fees, incurred while the property is under the control of the state of Montana.

History: En. Sec. 8, Ch. 502, L. 1973; amd. Sec. 9, Ch. 3, L. 1977; amd. Sec. 6, Ch. 440, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 3 and once by Ch. 440. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 3, Laws of 1977, deleted "co-

operative" before "agreements" near the beginning of the second sentence; substituted "shall indemnify the owner for any liability, including court costs and attorney's fees, incurred" in the middle of the second sentence for "shall hold the owner harmless for any liability that may occur"; and made minor changes in phraseology, punctuation and style.

Chapter 440, Laws of 1977, substituted "society" two places in the first sentence for "department."

81-2509. Co-operation with governmental units. The society is authorized and directed to cooperate with all federal, state and local government agencies, in the identification, acquisition, restoration, enhancement, preservation and administration of all such sites and objects for the use and enjoyment of the people, and for the purpose of exhibition and interpretation of the history and culture of the state of Montana.

History: En. Sec. 9, Ch. 502, L. 1973; amd. Sec. 7, Ch. 440, L. 1977.

Amendments

The 1977 amendment substituted "The society" at the beginning of the section for "The department."

81-2510. Prevention of waste, destruction or removal. The society shall apply to any district court of the state of Montana for a writ of injunction to prevent the waste, removal, or destruction of any registered site or registered object. The society may not be required to give any bond in the application. Upon hearing of the petition for injunction, the court may restrain waste, removal, or destruction upon the site or of the object for a period of 1 year. The court may also provide in its order that during that period the society shall present to the parties involved a program for the protection, preservation, restoration, and maintenance of the registered site or registered objects.

History: En. Sec. 10, Ch. 502, L. 1973; amd. Sec. 10, Ch. 3, L. 1977; amd. Sec. 8, Ch. 440, L. 1977.

Amendments

Chapter 3, Laws of 1977, made minor changes in phraseology, punctuation and style.

Chapter 440, Laws of 1977, substituted "society" throughout the section for "department."

Compiler's Notes

This section was amended twice in 1977, once by Ch. 3 and once by Ch. 440. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

81-2511. Violation as misdemeanor—penalty. Any person who shall willfully injure, remove or damage any registered site or object thereon

without obtaining a permit or shall violate any of the regulations made by the society relating to state parks, historical, paleontological or prehistorical sites, buildings, structures, monuments or objects, shall be guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars (\$1,000), or be imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment.

History: En. Sec. 11, Ch. 502, L. 1973; **Amendments**

amd. Sec. 9, Ch. 440, L. 1977. The 1977 amendment substituted "society" for "department."

81-2512. Report of discovered sites or objects—preservation. Any person conducting any activities, including survey, excavation or construction who discovers on any lands owned, leased or controlled by this state or any agency thereof, any object or objects as defined in this act, shall promptly report to the society the existence of any such site or object discovered in the course of such survey, excavation or construction, and shall take all reasonable steps to secure its preservation.

History: En. Sec. 12, Ch. 502, L. 1973; **Amendments**

amd. Sec. 10, Ch. 440, L. 1977. The 1977 amendment substituted "society" for "department."

81-2513. Advisory council. The governor may appoint an advisory council from properly qualified persons in the fields of anthropology, archaeology, paleontology, and history and other related disciplines to advise and consult with the society and the board relating to all matters of Montana's antiquities.

History: En. Sec. 13, Ch. 502, L. 1973; **Effective Date**

amd. Sec. 11, Ch. 440, L. 1977. Section 12 of Ch. 440, Laws 1977 provided that the act should be effective on its passage and approval. Approved April 19, 1977.

Amendments

The 1977 amendment substituted "society" for "department."

81-2514. Act controlling. In so far as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 14, Ch. 502, L. 1973.

Effective Date

Section 15 of Ch. 502, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved April 2, 1973.

CHAPTER 26—LEASE OF GEOTHERMAL RESOURCES

Section

- 81-2601. Empowering the state board of land commissioners to lease.
- 81-2602. Definitions.
- 81-2603. Rules and regulations.
- 81-2604. Provisions of the lease.
- 81-2605. Royalties and rentals.
- 81-2606. Bonds to the state.
- 81-2607. Compensation to surface lessee.
- 81-2608. Compensation for improvements.
- 81-2609. Arbitrators to fix value of improvements—appeal.
- 81-2610. Disposition of royalties and other receipts.
- 81-2611. Application for water right—issuance of right.
- 81-2612. Conflicting leases.
- 81-2613. Severability clause.

81-2601. Empowering the state board of land commissioners to lease. The board of land commissioners may lease state-owned lands, including the beds of navigable streams and the beds of navigable bodies of water, to persons, associations, or corporations for prospecting, exploration, well construction, and the production of geothermal resources.

History: En. 81-2601 by Sec. 1, Ch. 111,
L. 1974.

Title of Act

An act to empower the board of land
commissioners to lease geothermal re-
sources on state lands.

81-2602. Definitions. Unless the context requires otherwise in this act:

(1) "Geothermal resources" means the natural heat energy of the earth, including the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth, either present in, resulting from, created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. Geothermal resources are sui generis, being neither a mineral resource nor a water resource, but they are closely related to and possibly affecting and affected by water resources in many instances. No right to seek, obtain, or use geothermal resources has passed or shall pass with any existing or future lease of state or school lands.

(2) "Board" means the board of land commissioners.

(3) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(4) "Geothermal development" means any of the operations or facilities necessary for the production of geothermal resources.

History: En. 81-2602 by Sec. 2, Ch. 111,
L. 1974.

81-2603. Rules and regulations. The board of land commissioners shall adopt rules governing the issuance of geothermal resource leases and the conduct of all geothermal operations. The board may also require the applicant for a geothermal lease to pay an application fee.

History: En. 81-2603 by Sec. 3, Ch. 111,
L. 1974.

81-2604. Provisions of the lease. (1) A lease issued by the board gives the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or interests leased, subject to conditions contained in the lease.

(2) In every geothermal resource lease granted there is reserved to this state the right to sell, lease or otherwise dispose of the surface of the lands covered thereby subject to the rights and privileges granted the lessee under the terms of the lease.

(3) The term of each lease shall be for a primary term of ten (10) years and for so long thereafter as geothermal resources in paying quantities are produced, provided that all conditions and terms of the lease are fully performed by the lessee.

If geothermal resources are not being produced from the leased premises

at the expiration of the primary term of the lease, but the owner of the lease is then engaged in drilling on the premises for geothermal resources, then the lease term shall be extended for so long as the drilling operations are diligently continued. If geothermal resources are recovered from any well drilled after the expiration of the primary term, the lease shall continue in force so long as geothermal resources in paying quantities are produced from the leased premises.

(4) Lessees may enter into agreements with other persons, associations, firms and corporations for drilling and other operations on state lands, but no such operating agreements shall be binding upon the state until filed with the department and approved by the board. No drilling or operating agreement may affect the obligations of each individual leaseholder to the state.

(5) Nothing contained in this act or other related acts shall prevent the board of land commissioners from entering into agreements for the pooling of acreage for unit operations for the production of geothermal resources and apportionment of geothermal royalties on an acreage or other equitable basis, or from modifying the royalty provisions of existing leases and all subsequent leases in accordance with pooling agreements and unit plans of operation. No agreement may be entered into which changes then the percentage of royalties to be paid to the state from the percentages fixed in its leases.

(6) Geothermal resources produced from any part of a unit in which state lands are included by virtue of a pooling agreement shall be considered to be produced from the state lands therein.

(7) Every lease shall specify the rental and royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a specified time, remove property placed on the leased lands upon the termination of the lease by forfeiture or by lapse of time. Furthermore, the lease may contain other provisions the board and the lessee agree upon, provided that the additional terms are not inconsistent with this chapter. The board may exercise business discretion in entering into leases under this chapter.

History: En. 81-2604 by Sec. 4, Ch. 111,
L. 1974.

81-2605. Royalties and rentals. Geothermal leases shall be issued at an annual rental of not less than one dollar (\$1) per acre, payable in advance and/or a royalty which shall not be less than ten per cent (10%) of the amount or value of steam, or other forms of heat or energy, derived from the production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee and not more than five per cent (5%) of any by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee.

History: En. 81-2605 by Sec. 5, Ch. 111,
L. 1974.

81-2606. Bonds to the state. The board may, at any time prior to the execution and delivery of a geothermal lease, or at any time during the life

of the lease, require a lessee to file with the department a bond to protect the rights of the state. The bonds shall be in form and amount prescribed by the board. The board may at any time require new or additional bonds if the interests of the state will not adequately be protected by the bond previously filed.

History: En. 81-2606 by Sec. 6, Ch. 111,
L. 1974.

81-2607. Compensation to surface lessee. The lessee of any geothermal lease shall compensate the surface lessee for any damage to the surface or leasehold interest caused as a result of the geothermal lease. The board may require the geothermal lessee to post a bond, in an amount to be set by the board, to insure the payment of damages to any surface lessee. If the surface lessee and the geothermal lessee disagree as to the reasonable amount of surface damage, damage shall be ascertained in the same manner as prescribed in section 81-2609.

History: En. 81-2607 by Sec. 7, Ch. 111,
L. 1974.

81-2608. Compensation for improvements. A geothermal lessee of state lands has the right to place upon the leased lands a reasonable amount of improvements, provided that such improvements are directly related to the purpose of the lease. Whenever another person becomes the geothermal lessee, he shall pay the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof.

In determining the value of these improvements the original cost, the present condition, and the suitability of the improvements for the uses ordinarily made of geothermal resources shall be considered.

The former lessee may, however, remove or dispose of the movable improvements from the land within sixty (60) days from the expiration of his lease except for casing the well and other equipment necessary for the preservation of any geothermal well. If not removed within sixty (60) days, improvements shall become the property of the state unless the board shall grant additional time for the removal thereof. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under section 81-2609, or that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: En. 81-2608 by Sec. 8, Ch. 111,
L. 1974.

81-2609. Arbitrators to fix value of improvements—appeal. If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee, and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three (3) arbitrators, one (1) of whom shall be appointed by the owner of the improvements, one (1) by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by

the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties. If either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the department which shall examine the improvements and make the final decision as to the value of the improvements. The department shall apportion the actual cost of the re-examination to the owner and the new lessee as justice may require. The value of the improvements shall be ascertained and fixed as provided in section 81-2608 of this chapter.

History: En. 81-2609 by Sec. 9, Ch. 111, L. 1974.

81-2610. Disposition of royalties and other receipts. The department shall credit fees collected under geothermal leases to the general fund; all rentals, penalties and bonuses shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: En. 81-2610 by Sec. 10, Ch. 111, L. 1974.

81-2611. Application for water right—issuance of right. If any geothermal development located on state land requires the utilization of water, the lessee may at any time prior to one (1) year before the expiration of his lease, make application to the board of land commissioners for permission to secure a water right to the land under his lease. Such application shall be in writing, show the permanency of the water supply, and the estimated cost of utilizing such water resources. If the proposed plan meets with the approval of the board, permission shall be granted to the lessee to secure the desired water right for the land. Such right shall be secured in accordance with Title 89, chapter 8, R. C. M. 1947, and shall be filed in the name of the state of Montana. Existing water rights purchased by the geothermal lessee shall be the property of the lessee.

History: En. 81-2611 by Sec. 11, Ch. 111, L. 1974.

81-2612. Conflicting leases. Where there are conflicting leases, including but not limited to geothermal, coal, mineral and oil and gas leases, embracing the same land, the person who first was issued a lease shall be entitled to priority of rights, provided however that the exercise of this priority shall not interfere with actual production from the lease as determined by the board.

History: En. 81-2612 by Sec. 12, Ch. 111, L. 1974.

81-2613. Severability clause. If any section, clause, paragraph, or provision of this act shall be found invalid by a court of competent jurisdiction, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, paragraph or clause and the act as a whole shall not be declared invalid by reason of the fact that one (1) or

more sections, clauses, sentences, paragraphs, or parts may have been found invalid by any court.

History: En. 81-2613 by Sec. 13, Ch. 111, L. 1974.

CHAPTER 27—NATURAL AREAS ACT

Section

- | | |
|----------|--|
| 81-2701. | Title. |
| 81-2702. | Legislative intent. |
| 81-2703. | Definitions. |
| 81-2704. | Methods of bringing land under this act. |
| 81-2705. | Natural area identification procedures—other agencies to assist—annual report to legislature. |
| 81-2706. | Legislature may designate. |
| 81-2707. | Board given acquisition powers. |
| 81-2708. | Designated areas not subject to condemnation or development—pre-existing land uses permitted to continue. |
| 81-2709. | Board to promulgate protective rules. |
| 81-2710. | Composition and duties of advisory council—governor may appoint. |
| 81-2711. | Consultation with interested parties—proceedings and files to be open. |
| 81-2712. | When more restrictive provisions to apply. |
| 81-2713. | Separability. |

81-2701. Title. This act shall be known and may be cited as the "Montana Natural Areas Act of 1974."

History: En. 81-2701 by Sec. 1, Ch. 254, L. 1974. natural and potentially natural areas in the state and to provide for the protection of these areas.

Title of Act

An act to acknowledge the existence of

81-2702. Legislative intent. The legislative assembly finds that in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values, or areas possessing these characteristics to a degree promising their restoration to a natural state; that since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, the remaining areas should be preserved for the benefit of this and future generations; and that currently there are no regulations promulgated by the state or local governments to ensure adequate protection for natural areas. It is the intention of the legislative assembly to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations, to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to

present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act.

History: En. 81-2702 by Sec. 2, Ch. 254,
L. 1974.

81-2703. Definitions. (1) "Natural area" means an area of land which must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant, and also must have one or more of the following characteristics:

(a) An outstanding mixture or variety of vegetation, wildlife, water resource, landscape and scenic values.

(b) An important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational or ecological purposes.

(2) "Board" means the board of land commissioners.

(3) "Department" means the department of state lands.

(4) "Council" means the natural areas advisory council created by this act.

History: En. 81-2703 by Sec. 3, Ch. 254,
L. 1974.

81-2704. Methods of bringing land under this act. A natural area, as defined in section 3 [81-2703], may become subject to the provisions of this act in any of the following ways:

(1) Designation by the board on lands controlled by the board.

(2) Designation by the legislative assembly on lands owned by the state of Montana.

(3) Acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided however that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party.

(4) Gift accepted by the board.

(5) Trade of state-owned trust land for a natural area on federal, county or private land, provided however that lands received in exchange for trust lands should be equal in value to the exchanged trust land and, as closely as possible, equal in area.

History: En. 81-2704 by Sec. 4, Ch. 254,
L. 1974.

81-2705. Natural area identification procedures—other agencies to assist—annual report to legislature. The department shall establish and utilize procedures to identify the existing or potentially natural areas on lands under its jurisdiction and shall collect information on potential natural areas on private, county, and other state land. The department of natural resources shall co-operate with the department by reporting potential natural areas on state timber lands. The department shall make recommendations to the board for designation of natural areas on state lands controlled by

the board and for acquisition of interests in other lands for the preservation of natural areas. The board shall submit to each legislative assembly an annual report on its designation and acquisition activities.

History: En. 81-2705 by Sec. 5, Ch. 254,
L. 1974.

81-2706. Legislature may designate. The legislative assembly may designate natural areas on any state-owned land.

History: En. 81-2706 by Sec. 6, Ch. 254,
L. 1974.

81-2707. Board given acquisition powers. Subject to the limits of available appropriations, the board is authorized to acquire interests to lands by any lawful means for the purpose of designating natural areas; provided that the board shall exercise the power of eminent domain only in specific instances where authorized by the legislative assembly.

History: En. 81-2707 by Sec. 7, Ch. 254,
L. 1974.

81-2708. Designated areas not subject to condemnation or development—pre-existing land uses permitted to continue. (1) Natural areas acquired or designated in accordance with the provisions of this act are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the condemnation or development.

(2) Land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under section 9 [81-2709].

History: En. 81-2708 by Sec. 8, Ch. 254,
L. 1974.

81-2709. Board to promulgate protective rules. (1) The board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this act and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse.

(2) The regulations shall provide at least two board meetings per year for the receipt of testimony on the board's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations, and positive notification of all involved landowners and lessees has been made.

History: En. 81-2709 by Sec. 9, Ch. 254,
L. 1974.

81-2710. Composition and duties of advisory council—governor may appoint. (1) If the governor appoints a natural areas advisory council, the

council shall consist of seven (7) citizens of the state, four (4) of whom shall possess experience in the evaluation and preservation of natural areas, and one (1) member each from agriculture, ranching and industry. The council shall make recommendations to the board for the administration of the natural areas system and additions thereto from state, federal, county or private land.

(2) Within ninety (90) days of the receipt of a council recommendation the board shall:

(a) In the case of state trust lands and existing designated areas promulgate a rule designating a recommended natural area contained in the recommendation and adopting the recommendation, or issue a written statement of its reasons for denying the recommendation.

(b) In the case of federal, private or county land direct the department to begin investigation and negotiation to acquire by purchase or trade interests in the land necessary to protect the natural area, or issue a written statement of its reasons for denying the recommendation.

History: En. 81-2710 by Sec. 10, Ch. 254, L. 1974.

81-2711. Consultation with interested parties—proceedings and files to be open. The board and the natural areas advisory council shall consult with citizen organizations and other interested state agencies in the administration of this act. All files and proceedings under this act shall be open to the public.

History: En. 81-2711 by Sec. 11, Ch. 254, L. 1974.

81-2712. When more restrictive provisions to apply. A designated natural area that is or shall become a part of a state park, wildlife refuge, or similar area shall be subject to the provisions of this act and the laws under which the other areas may be administered and in the case of conflict between the provisions of these laws the more restrictive provisions shall apply.

History: En. 81-2712 by Sec. 12, Ch. 254, L. 1974.

81-2713. Separability. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

History: En. 81-2713 by Sec. 13, Ch. 254, L. 1974.

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...

...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...
...the ... of ...

...the ... of ...

...the ... of ...

...the ... of ...

TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

Chapter

1. Department of administration—duties, 82-108.1 to 82-111.
3. Board of athletics, 82-301 to 82-303, 82-305, 82-306, 82-308 to 82-310.
4. Attorney general, 82-401, 82-414 to 82-447.
5. Clerk of supreme court, 82-501, 82-503, 82-505, 82-510 to 82-513.
11. Examiners, state board of—advertising for bids—state printing contract and supplies, 82-1105, 82-1117, 82-1131, 82-1131.1, 82-1133, 82-1136, 82-1147, 82-1149, 82-1150.
12. Fire marshal, state, 82-1201 to 82-1202.1, 82-1208, 82-1209, 82-1211, 82-1215, 82-1218, 82-1222, 82-1226, 82-1229, 82-1231.
13. Governor—powers—records—secretary, 82-1304.1 to 82-1304.5, 82-1311 to 82-1315.
15. Hail insurance, state board of, 82-1501, 82-1502, 82-1506, 82-1507, 82-1512, 82-1515 to 82-1517, 82-1519.
17. Lieutenant governor, 82-1702.1 to 82-1703.
19. State purchases, 82-1901.1, 82-1902.1 to 82-1905, 82-1908, 82-1911, 82-1914, 82-1915.1, 82-1916, 82-1916.1, 82-1917 to 82-1943.
20. Reporters of decisions of supreme court—publication and distribution of reports, 82-2002, 82-2007.
22. Secretary of state, 82-2202, 82-2208.
27. Co-ordinator of Indian affairs, 82-2701 to 82-2703, 82-2705.
29. Agriculture and livestock council, Repealed—Section 173, Chapter 218, Laws of 1974.
30. Natural resources and development council, Repealed—Section 108, Chapter 253, Laws of 1974.
31. State agency for surplus property, 82-3101 to 82-3106.
32. State records, 82-3207 to 82-3209.
33. Department of administration—supervision of facilities—building program—communications, 82-3306, 82-3310.1, 82-3310.2, 82-3314 to 82-3321, 82-3325 to 82-3325.2, 82-3329 to 82-3341.
34. Open meetings of public agencies, 82-3402 to 82-3406.
36. Montana arts council, 82-3601 to 82-3609.
37. Planning and Economic Development Act, 82-3701, 82-3702, 82-3705 to 82-3705.3, 82-3706, 82-3710.
38. Post-enemy-attack continuity in government, 82-3801 to 82-3809.
39. Teletypewriter communications system for law enforcement, 82-3901 to 82-3906.
40. Annual reports to governor, 82-4001, 82-4002.
41. Public contractor's deposits for withdrawal of retained payments, 82-4101 to 82-4104.
42. Administrative Procedure Act, 82-4201 to 82-4203.5, 82-4204 to 82-4229.
43. State insurance plan and tort claims, 82-4301 to 82-4306, 82-4308 to 82-4312.1, 82-4316.1, 82-4318 to 82-4325, 82-4327 to 82-4335.
44. Western interstate nuclear compact, 82-4401 to 82-4403.
45. Department of community affairs—audit duties, 82-4515 to 82-4530.
46. Legislative review of regulatory agencies, 82-4601 to 82-4609.

CHAPTER 1—DEPARTMENT OF ADMINISTRATION—DUTIES

Section.

- 82-108.1. Definition.
- 82-109. Duties of department—expenditure control.
- 82-109.1. Authorizations for disbursements—submission to department.
- 82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated claims.
- 82-109.3. Form of claims—disapproval by department.
- 82-109.4. Salary schedules maintained by department.
- 82-110. Department to prescribe uniform accounting system.
- 82-111. Assistance of department to legislative assembly—reports of department.

82-106 to 82-108. Repealed.**Repeal**

Sections 82-106 to 82-108 (Secs. 1 to 3, Ch. 194, L. 1951; Sec. 2, Ch. 98, L. 1961;

Sec. 41, Ch. 177, L. 1965), relating to the office of state controller, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-108.1. Definition. Unless the context requires otherwise, in this chapter "department" means the department of administration provided for in Title 82A, chapter 2.

History: En. 82-108.1 by Sec. 44, Ch. 326, L. 1974.

Title of Act

An act for the codification and general revision of the laws relating to the department of administration.

82-109. Duties of department—expenditure control. (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees eliminated, public service improved, and the cost of government reduced.

(2) The department shall apply expenditures against nongeneral fund moneys wherever possible before using the general fund appropriations.

(3) The department may, when authorized by the governor, require a quarterly allotment system of expenditure for any office, institution, or agency. The amount of the respective appropriation made by the legislative assembly shall then, except with respect to items of capital outlay and repairs and replacement, be made available to the office, institution, or agency in quarterly allotments. However, the quarterly allotment shall be based on the requirements of that office, institution, or agency during that quarter based on previous experience of that office, institution, and agency, and not on a prorata quarterly basis.

(4) The department may establish procedures necessary to ensure that expenditures are made and accounted for in accordance with the budget plan authorized by the legislative assembly in the enactment of the appropriations, including, but not limited to, procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period, and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within three (3) months from the date of the issuance of the purchase order or contract.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971; amd. Sec. 45, Ch. 326, L. 1974.

Amendments

The 1971 amendment inserted "nongeneral fund moneys" in subsection (2); and added subsection (4).

The 1974 amendment substituted "department" for "controller" and "state controller" throughout the section; and made minor changes in phraseology, punctuation and style.

Transition Schedule — Administration Rules

Section 28, Ch. 285, Laws 1977 read

"Rules and policies of the department of administration not exempted from the Montana Administrative Procedure Act are subject to 82-4204(3) on and after October 1, 1977. The director of administration shall discontinue publication of the Montana administrative manual after that date but may continue the publication of this material in manual form under a new title not containing the word 'administrative'. The director may file any rules published in the first volume of the Montana administrative manual as of January 1, 1977, with the secretary of state before October 1, 1977, without being subject to the notice and hearing requirements of 82-4204(1). The secretary of state shall arrange with the director

of administration for publication of the rules of the department of administration in a volume separable from the adminis-

trative rules of Montana for the convenience of state offices which do not wish to acquire the entire code."

82-109.1. Authorizations for disbursements—submission to department.

All authorizations for disbursements, shall be given by the agency concerned, and a record shall be kept by the agency of all the authorizations and expenditures. Claims for any disbursement must be submitted to the department and must bear the signature of the authorizing officer or employee.

History: En. Sec. 1, Ch. 97, L. 1961; amd. Sec. 46, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state controller" in two places; deleted from the last sentence the form to be used in certifying a claim (see parent volume); and made minor changes in phraseology, punctuation and style.

82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated claims.

(1) The department may pre-audit a liquidated claim against the state, and ascertain that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged, and (4) the expenditure is legal. The department may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a liquidated claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislative assembly.

(2) An unliquidated claim submitted to the department shall be transmitted to the state board of examiners to be processed as provided by law.

History: En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963; amd. Sec. 1, Ch. 91, L. 1969; amd. Sec. 47, Ch. 326, L. 1974.

Amendments

The 1969 amendment, in the first sentence, substituted "controller may pre-audit liquidated or settled claims" for "controller shall pre-audit all liquidated or settled claims"; in item (3), deleted "and that the appropriation is available and adequate" after "fund is charged"; and substituted the present second sentence for the former second and third sentences, reading, "If the volume of claims will not permit such audit of each claim, item (2) above may be accomplished on a spot-check basis. The pre-auditing conduct-

ed by the state controller shall be concerned only with the form and accuracy of the claim and supporting documents, and the availability of the funds and in no event shall the state controller interpose his judgment regarding the wisdom or expediency of any item or items of expenditure."

The 1974 amendment substituted "department" for "state controller" and "controller" throughout the section; substituted "a liquidated claim" for "liquidated or settled claims" after "may pre-audit" in the first sentence of subsection (1); substituted "An unliquidated claim" in subsection (2) for "Any unliquidated or unsettled claims"; and made minor changes in phraseology, punctuation and style.

82-109.3. Form of claims—disapproval by department. The department may prescribe the claim form and may establish in writing, rules governing the preparation, submittal, and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the department shall be returned to the operating agency with an explanation in writing of why the claim was disapproved.

History: En. Sec. 3, Ch. 97, L. 1961; amd. Sec. 48, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state controller" in two

places; deleted a last sentence giving an aggrieved officer or board the right to appeal to the state board of examiners; and made minor changes in phraseology and punctuation.

82-109.4. Salary schedules maintained by department. The department shall maintain a schedule of all salaries paid to personnel of civil executive state offices and shall only approve payroll claims agreeing with that schedule. All changes in personnel or salary status shall be authorized as provided by law, and the department shall alter the schedule accordingly when notified by the authorizing agency. However, no changes in personnel or salary status may be authorized that will cause an agency to exceed its appropriation or that will result in a deficiency or supplemental appropriation request to the legislative assembly.

History: En. Sec. 4, Ch. 97, L. 1961; amd. Sec. 49, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state controller" in two places; and made minor changes in phraseology.

82-110. Department to prescribe uniform accounting system. (1) The department shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof, which shall be submitted to the respective heads of agencies and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the department for inspection by the members of the legislative assembly.

(2) The department shall examine all financial affairs of every state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this chapter.

(3) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. Such procedures shall include the reporting of any canceling and writing off of accounts receivable to the next session of the legislative assembly.

(4) When not specifically provided by law, the department may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

(5) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any moneys received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

(6) All officers, employees, and other persons connected with the fiscal

affairs of any state office, agency, or institution must afford all reasonable facilities for the examination of accounts and investigations provided for in this chapter and must make reports, returns, and exhibits relating to such fiscal matters to the department in a form that the department shall prescribe. The department shall keep in its office the names of and amount of salary paid to each person regularly employed by the state and every agency.

(7) If an officer or employee of the state or any agency refuses or neglects to comply with subdivision (6) of this section, the salary of that officer or employee shall, on request of the department to the proper official, be withheld until that officer or employee complies with subdivision (6), and the department certifies approval to the disbursing officer.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971; amd. Sec. 50, Ch. 326, L. 1974.

Amendments

The 1967 amendment deleted "acting with the state examiner" after "controller" near the beginning of subsection (a) and deleted "in addition to those enumerated in section 82-102 hereof" after "institutions"; and deleted "shall receive copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating

work done in preparing such audits and reports" after "The controller" near the beginning of subsection (b).

The 1971 amendment inserted new subsections (c), (d) and (e); redesignated former subsections (c) and (d) as subsections (f) and (g); and changed internal references to correspond.

The 1974 amendment substituted "department" for "controller" throughout the section; substituted "this chapter" for "this act" in two places; redesignated subsections (a) through (g) as subsections (1) through (7); and made minor changes in phraseology and punctuation.

82-111. Assistance of department to legislative assembly—reports of department. The department shall make all reports and submit all information and data the legislative assembly requests, and, when requested, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate. The department shall, during the consideration of appropriation measures by the house and senate, devote so much of its time as may be required by the above-named committees, under the direction of the respective chairmen of the committees.

History: En. Sec. 11, Ch. 194, L. 1951; amd. Sec. 35, Ch. 93, L. 1969; amd. Sec. 51, Ch. 326, L. 1974.

Amendments

The 1969 amendment deleted the subsection designation "(a)" in the first paragraph and deleted former subsection (b). For previous text, see parent volume.

The 1974 amendment substituted "department" for "controller" in two places; and made minor changes in phraseology.

82-112. Repealed.

Repeal

Section 82-112 (Sec. 1, Ch. 210, L. 1953; Sec. 10, Ch. 158, L. 1959; Sec. 52, Ch. 326,

L. 1974), relating to submitting budget to governor before federal agency, was repealed by Sec. 9, Ch. 259, Laws of 1975.

CHAPTER 2—ARMORY BOARD—LEASING OF ARMORY SITES

82-207 to 82-211. Repealed.

Repeal

Sections 82-207 to 82-211 (Secs. 1 to 5, Ch. 122, L. 1941), relating to the leasing of armory sites, were repealed by Sec. 73, Ch. 94, Laws of 1974.

CHAPTER 3—BOARD OF ATHLETICS

Section

82-301. Board of athletics.

82-301.1. Definitions.

82-302. Department's duties.

82-303. Jurisdiction over boxing, sparring, and wrestling matches—licenses—application for license.

82-305. Duration of bouts—glove specifications—physical examination of participants.

82-306. Forfeiture of license for conducting fake bouts.

82-308. Report of ticket sales—tax on gross receipts—disposition of tax moneys received.

82-309. Bond of applicant for license.

82-310. Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax.

82-301. (4551) Board of athletics. The members of the board of athletics shall serve without compensation but shall be allowed travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, to be paid by the state treasurer on warrant properly drawn, out of the proceeds of the tax collected under this act. Before April 1 of each year the board shall elect one of its number chairman, shall adopt a seal for the board, and may adopt rules for the administration of its office. Two of the members of the board constitute a quorum to do business, and the concurrence of at least two members is necessary to render a choice or decision by the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R. C. M. 1921; amd. Sec. 1, Ch. 103, L. 1927; amd. Sec. 345, Ch. 350, L. 1974; amd. Sec. 19, Ch. 453, L. 1977.

Amendments

The 1974 amendment rewrote this sec-

tion which established the former state athletic commission. For prior law, see parent volume.

The 1977 amendment substituted "travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended" in the first sentence for "necessary expenses"; and made minor changes in phraseology, punctuation and style.

82-301.1. Definitions. Unless the context requires otherwise, in this chapter:

(1) "Board" means the board of athletics, provided for in section 82A-1602.4; and

(2) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

History: En. 82-301.1 by Sec. 346, Ch. 350, L. 1974.

82-302. (4552) Department's duties. The department shall keep a record of the board's proceedings, preserve the board's books, documents and papers and prepare for service notices and other papers required by the board; and it may under direction of the board issue subpoenas for the attendance of witnesses before the board and may, under direction of the board, administer oaths in matters pertaining to the administration of the affairs of the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R. C. M. 1921; amd. Sec. 2, Ch. 103, L. 1927; amd. Sec. 36,

Ch. 93, L. 1969; amd. Sec. 347, Ch. 350, L. 1974.

Amendments

The 1969 amendment substituted the re-

porting requirements of section 82-4002 for former provision requiring annual reports.

The 1974 amendment rewrote this sec-

tion which established the duties of the secretary to the former state athletic commission. For prior law, see parent volume.

82-303. (4554) Jurisdiction over boxing, sparring, and wrestling matches—licenses—application for license. (1) The board has the sole direction, management, control, and jurisdiction over boxing, sparring, and wrestling matches and exhibitions conducted, held, or given within this state by a club, corporation, or association. No boxing, sparring, or wrestling match or exhibition may be conducted, held, or given within this state except when licensed in accordance with this act.

(2) The board may grant or revoke, subject to 82A-1603 and 82A-1604, a license to conduct, hold, or give boxing, sparring, and wrestling matches and exhibitions to a club, corporation, or association which, if it is an amateur athletic association, may be incorporated or organized under rules adopted by the board.

(3) This act does not apply to or prohibit amateur boxing or wrestling exhibitions conducted in or by organized amateur clubs, schools, and gymnasiums.

(4) A license is subject to rules the board makes.

(5) An application for a license shall be in writing and addressed to the department and verified by an officer of the club, corporation, or association on whose behalf the application is made. It shall contain facts which show the applicant entitled to receive a license and other facts and recitals the board by rule requires to be shown.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R. C. M. 1921; amd. Sec. 3, Ch. 103, L. 1927; amd. Sec. 1, Ch. 171, L. 1953; amd. Sec. 348, Ch. 350, L. 1974; amd. Sec. 1, Ch. 5, L. 1977.

Amendments

The 1974 amendment substituted "board" or "department" for "commission" throughout the section; inserted "subject to sections 82A-1603 and 82A-

1604" in the third sentence; and made minor changes in phraseology, punctuation and style.

The 1977 amendment divided the section into subsections; inserted "when licensed" in the last sentence of subsection (1); substituted "may grant or revoke, subject to 82A-1603 and 82A-1604" in subsection (2) for "may, in its discretion and subject to sections 82A-1603 and 82A-1604, issue and at its pleasure revoke"; and made minor changes in phraseology and punctuation.

82-305. (4556) Duration of bouts—glove specifications—physical examination of participants. A boxing or sparring match or exhibition may be not more than twenty (20) rounds in length; and the contestants shall wear during these contests, gloves weighing at least six (6) ounces. No person may take part in an exhibition or sparring match unless he has first passed a rigorous physical examination to determine his fitness to engage in the exhibition. The examination is to be conducted by a regular practicing physician designated by the board.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4556, R. C. M. 1921; amd. Sec. 5, Ch. 103, L. 1927; amd. Sec. 1, Ch. 185, L. 1947; amd. Sec. 349, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission"; and made minor changes in phraseology.

82-306. (4557) Forfeiture of license for conducting fake bouts. A club, corporation, or association which conducts, holds, gives, or participates in, a sham or fake boxing or sparring match or exhibition shall forfeit the license issued under this act, and it may not thereafter receive another license under this act.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R. C. M. 1921; amd. Sec. 6, Ch. 103, L. 1927; amd. Sec. 350, Ch. 350, L. 1974.

Amendments

The 1974 amendment made minor changes in phraseology, punctuation and style.

82-308. (4559) Report of ticket sales—tax on gross receipts—disposition of tax moneys received. An individual, club, corporation, or association which exercises the privileges conferred by this act, shall, within twenty-four (24) hours after the completion of a boxing, sparring, or wrestling contest or exhibition, furnish to the department a written report, verified by one of its officers or owners, showing the number of tickets sold for the boxing, sparring, or wrestling contest or exhibition and the amount of gross proceeds, and such other matters as the board prescribes, and shall also within twenty-four (24) hours pay to the department a tax of five per cent (5%) of its total gross receipts after deducting the federal admission tax, if any, from the sale of tickets of admission to the boxing, sparring, or wrestling match or exhibition. The tax shall be deposited by the department in the earmarked revenue fund for the use of the board, subject to section 82A-1603 (6).

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R. C. M. 1921; amd. Sec. 8, Ch. 103, L. 1927; amd. Sec. 2, Ch. 171, L. 1953; amd. Sec. 162, Ch. 147, L. 1963; amd. Sec. 30, Ch. 271, L. 1963; amd. Sec. 351, Ch. 350, L. 1974; amd. Sec. 1, Ch. 217, L. 1975.

Amendments

The 1974 amendment substituted "department" for "commission" in the first sentence; rewrote the last sentence relating to disposition of money transmitted to the state treasurer (see parent vol-

ume); and made minor changes in phraseology, punctuation and style.

The 1975 amendment inserted "individual" at the beginning of the first sentence; substituted "after the completion of" for "after the determination of" in the first sentence; inserted "or owners" after "its officers" in the first sentence; substituted "department" for "county treasurer" near the end of the first sentence; deleted a second sentence reading "This tax shall be transmitted to the state treasurer by the county treasurer within a period of ten (10) days after its collection"; inserted "by the department" in the last sentence; and made a minor change in phraseology.

82-309. (4560) Bond of applicant for license. Before a license is granted to a club, corporation, individual, or association to conduct, hold, or give a boxing, sparring, or wrestling match or exhibition, the applicant shall file with the department a surety bond, executed by a surety company authorized to do business in this state, in the sum of not less than two thousand dollars (\$2000) and not more than five thousand dollars (\$5,000), payable to this state, to be approved as to the amount by the board. The bond shall be conditioned on the payment of the tax imposed by section 82-308 and any person injured by the willful, malicious or wrongful act of the licensee may bring an action on the surety bond in his own name to recover damages suffered by reason of such willful, malicious or wrongful

act. The surety bond shall remain in effect for thirty (30) days beyond the license period granted by the board. Cash or its equivalent may be deposited with the department in lieu of the surety bond, but it is subject to the same time limits and conditions as a surety bond. On the filing and approving of the surety bond, the department shall issue to the applicant a license.

History: En. as Ch. 190, L. 1919, app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4560, R. C. M. 1921; amd. Sec. 9, Ch. 103, L. 1927; amd. Sec. 3, Ch. 171, L. 1953; amd. Sec. 352, Ch. 350, L. 1974; amd. Sec. 2, Ch. 217, L. 1975.

Amendments

The 1974 amendment substituted "board" for "commission"; and made minor changes in phraseology.

The 1975 amendment inserted "individual" near the beginning of the first sentence; substituted "the applicant shall file

with the department * * * by the board" for "the applicant shall execute and file with the state treasurer a bond in the sum of five thousand dollars (\$5,000), payable to this state, to be approved in form by the attorney general, and as to sufficiency of the sureties by the board"; added to the second sentence "and any person injured by the willful, malicious, or wrongful act of the licensee may bring an action on the surety bond in his own name to recover damages suffered by reason of such willful, malicious or wrongful act"; inserted the third and fourth sentences; and inserted "surety" in the last sentence.

82-310. (4561) Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax. When a club, corporation, or association fails to make a report of a contest at the time prescribed by this act or when the report is unsatisfactory to the board, it may examine or have examined the books and records of the club, corporation, or association, and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for a contest and the amount of tax due under this act, which tax it may, as the result of the examination, fix and determine. In case of default in the payment of tax ascertained to be due, together with the expenses incurred in making the examination, for a period of twenty (20) days after notice to the delinquent club, corporation, or association of the amount at which it may be fixed by the board, the delinquent shall forfeit its license and is disqualified from receiving a new license or a renewal of license; and it shall in addition forfeit to this state the sum of five hundred dollars (\$500), which may be recovered by the attorney general in the name of this state in the same manner as other penalties are by law recovered, and when collected shall be used and applied as other moneys received under this act.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920; effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4561, R. C. M. 1921; amd. Sec. 10, Ch. 103, L. 1927; amd. Sec. 353, Ch. 350, L. 1974.

Amendments

The 1974 amendment substituted "board" for "commission"; and made minor changes in phraseology, punctuation and style.

CHAPTER 4—ATTORNEY GENERAL

Section

- 82-401. General duties.
- 82-414. Division of criminal investigation created—appointment and qualifications.
- 82-415. Definition of term.
- 82-416. Powers and duties of agents.
- 82-417. Access to files of division of criminal investigation.

- 82-418. Division of criminal investigation covered by retirement program.
- 82-419. State agencies to co-operate with division of criminal investigation.
- 82-420. Location of division of criminal investigation.
- 82-421. Training co-ordinator for county attorneys.
- 82-422. Appointment of training co-ordinator.
- 82-423. Functions of training co-ordinator.
- 82-424. Attorney general authorized to issue confidential registrations.
- 82-425. Fire code.
- 82-426. Distribution.
- 82-427. Short title.
- 82-428. Purpose.
- 82-429. Creation of division of forensic science—head.
- 82-430. Functions of the division.
- 82-431. Authority to accept grants.
- 82-432. Board of forensic science—establishment—composition.
- 82-433. Duties of board.
- 82-434. Rules authorized.
- 82-435. Termination of board.
- 82-436. Duties of state medical examiner.
- 82-437. Associate medical examiners—qualifications—remuneration.
- 82-438. Purpose and function of laboratory.
- 82-439. Responsibilities of laboratory director.
- 82-440. Removal of state medical examiner and laboratory director.
- 82-441. Exemption from liability.
- 82-442. Property of deceased—disposition.
- 82-443. Burial of corpse.
- 82-444. Appointment of deputy coroners.
- 82-445. Penalty.
- 82-446. Report to county attorney.
- 82-447. Records—custodian.

82-401. (199) General duties. It is the duty of the attorney general:
1 to 5. * * * [Same as parent volume.]

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices. He shall give any such opinion within three (3) months following the date it is requested, unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion shall be controlling unless overruled by a state district court or the supreme court.

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state, and under the direction of the board of investments, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence

of the judgment in favor of the state, under the direction of the board of investments to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must be paid out of any money appropriated for such purposes.

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, board of state prison commissioners, and other duties prescribed by law.

12. * * * [Same as parent volume.]

History: En. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R. C. M. 1921; amd. Sec. 89, Ch. 199, L. 1965; amd. Sec. 13, Ch. 344, L. 1973; amd. Sec. 1, Ch. 257, L. 1975; amd. Sec. 1, Ch. 118, L. 1977; amd. Sec. 12, Ch. 343, L. 1977. Cal. Pol. C. Sec. 470.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 118 and once by Ch. 343. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1973 amendment deleted "state board of education" following "state board of land commissioners" in subdivision 11.

The 1975 amendment inserted "to the city attorney of any city or town" in the first sentence of subdivision 6; and added the last sentence of subdivision 6.

Chapter 118, Laws of 1977, added the last sentence of subdivision 6.

Chapter 343, Laws of 1977, substituted "board of investments" near the middle of subdivisions 8 and 9 for "board of examiners"; deleted "upon the order of the board of examiners" after "money necessary for such redemption must" near the end of subdivision 9; and deleted "when allowed by the board of examiners" after "the cost necessary to the prosecution must" near the end of subdivision 10.

Legislative Intent

Section 14 of Ch. 344, Laws 1973 read

"It is the intent of the legislature that sections 1 through 11 of this act be codified in title 75, chapter 56, R. C. M. 1947."

Separability Clause

Section 15 of Ch. 344, Laws 1973 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 344, Laws 1973 read "Sections 75-5601 through 75-5606 and 75-5608, R. C. M. 1947, are repealed."

Effective Date

Section 2 of Ch. 118, Laws 1977 provided the act should be effective on its passage and approval. Approved March 25, 1977.

Cross-References

Attorney general as head of department of law enforcement and public safety, sec. 82A-1201.

Assistance of County Attorneys

The attorney general has no power to initiate a felony prosecution in a district court independent of the county attorney, but he may order the county attorney to do so. State ex rel. Woodahl v. District Court, 159 M 112, 495 P 2d 182.

82-414. Division of criminal investigation created—appointment and qualifications. (1) There is hereby created a permanent division of criminal investigation within the office of the state attorney general.

(2) The attorney general shall appoint such agents and other necessary assisting personnel and fix their compensation.

(3) Each agent shall be a person qualified by experience, training and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971.

Title of Act

An act creating the position of criminal investigator within the department of the attorney general and defining the duties of said position.

Amendments

The 1971 amendment substituted "di-

vision of criminal investigation" for "position of criminal investigator" in subsection (1); substituted "such agents" for "the investigator" in subsection (2); and substituted "Each agent" for "The investigator" at the beginning of subsection (3).

Cross-References

Position abolished and functions transferred, sec. 82A-1202(2).

82-415. Definition of term. As used in this act:

"Agent" means a person appointed to the division of criminal investigation within the attorney general's office.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted the

definition of "agent" for a paragraph defining "investigator" as "the person appointed to the position of criminal investigator within the attorney general's office."

82-416. Powers and duties of agents. An agent shall have the power and duty to:

(1) Assist city, county, state and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) Assist various law enforcement schools held in the state for law officers when requested;

(3) Co-operate with the bureau of criminal identification and investigation;

(4) Act as a peace officer as defined in the laws of Montana when engaged in assisting or acting under the direction of city, county, state and federal law agencies as provided in this section.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "An

agent" for "The investigator" at the beginning of the section; and added subdivision (4).

82-417. Access to files of division of criminal investigation. A person with a known criminal record shall not be permitted access to the files of the division of criminal investigation, nor shall anyone else, without the order of a district judge or a supreme court justice.

History: En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "division of criminal investigation" for "investigator."

82-418. Division of criminal investigation covered by retirement program. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967;
amd. Sec. 5, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "All agents" for "The investigator" at the beginning of the section.

82-419. State agencies to co-operate with division of criminal investigation. All state departments and agencies shall co-operate with such agents and assisting personnel in providing transportation, educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967;
amd. Sec. 6, Ch. 219, L. 1971.

agents and assisting personnel" for "the investigator"; and made a minor change in phraseology.

Amendments

The 1971 amendment substituted "such

82-420. Location of division of criminal investigation. The location of the division of criminal investigation and its personnel shall be at the discretion of the state attorney general.

History: En. Sec. 7, Ch. 176, L. 1967;
amd. Sec. 7, Ch. 219, L. 1971.

Effective Date

Section 8 of Ch. 219, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

Amendments

The 1971 amendment substituted this section for a provision requiring that the office of the criminal investigator be located at Deer Lodge.

82-421. Training co-ordinator for county attorneys. There is created, within the department of justice, a training co-ordinator for county attorneys.

History: En. Sec. 1, Ch. 353, L. 1973.

Title of Act

An act creating a training co-ordinator of county attorneys within the department

of justice; providing that the training co-ordinator be appointed by the attorney general; providing for the functions of the training co-ordinator; and providing an immediate effective date.

82-422. Appointment of training co-ordinator. The training co-ordinator shall be appointed by the attorney general from a list of three (3) names proposed and submitted by the Montana county attorneys association.

History: En. Sec. 2, Ch. 353, L. 1973.

82-423. Functions of training co-ordinator. The training co-ordinator shall perform the functions assigned by the department head. The functions may include, but are not limited to, the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures and policies which will ensure that criminal laws are applied consistently and uniformly throughout the state of Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs and other relevant criminal law information;

(4) providing assistance with research, briefs or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function.

History: En. Sec. 3, Ch. 353, L. 1973.

Effective Date

Section 4 of Ch. 353, Laws 1973 pro-

vided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

82-424. Attorney general authorized to issue confidential registrations. The attorney general is authorized to issue to bona fide law enforcement agencies, except the highway patrol, within the state of Montana license plates and certificates of registration, which shall be exempt from all requirements for public disclosure. The issuance of such confidential registrations shall be subject to the following:

(1) Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

(2) Such license plates and registration may be displayed and used only during and in the furtherance of official law enforcement investigations.

(3) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

(4) The registration records of each vehicle so registered shall be maintained by the department of justice.

(5) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

(6) Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation the registrant shall within twenty-four (24) hours deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

(7) The attorney general may adopt rules necessary to implement the provisions of this act and to prevent the abuse or misuse of confidential registration plates.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975.

Title of Act

An act authorizing the attorney general

to issue confidential motor vehicle license plates and certificates of registration to bona fide law enforcement agencies within the state of Montana.

82-425. Fire code. Within 90 days after the effective date of this act, the department of justice shall compile, index, and publish all Montana statutes relating to fire protection in the form of a pamphlet to be entitled "Fire Codes of Montana". The pamphlet shall be revised and republished

within 90 days after the close of any regular legislative session in which an act relating to fire protection is adopted.

History: En. 82-425 by Sec. 1, Ch. 522, L. 1977.

Title of Act

An act requiring the department of jus-

tice to compile and make available in pamphlet form all Montana statutes relating to fire protection and to revise and republish the same within 90 days after the end of each legislative session.

82-426. Distribution. Upon completion, a copy of the pamphlet, as amended, shall be mailed to each fire and sheriff department within Montana without charge. The department of justice shall make copies of the pamphlet and subsequent revisions available to the public.

History: En. 82-426 by Sec. 2, Ch. 522, L. 1977.

82-427. Short title. This act shall be known as the "Montana Forensic Science System Act".

History: En. 82-427 by Sec. 1, Ch. 530, L. 1977.

Title of Act

An act creating the division of forensic science in the department of justice; providing for its administration, duties, and

functions; providing for a laboratory of criminalistics; altering the duties of the coroner; amending sections 16-3401, 16-3409, 95-801, and 95-802 and repealing sections 16-3402, 16-3403, 95-810, and 95-814, R. C. M. 1947.

82-428. Purpose. The purpose of this act is to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

History: En. 82-428 by Sec. 2, Ch. 530, L. 1977.

82-429. Creation of division of forensic science—head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title is state medical examiner and who shall be appointed by the board of forensic science. He shall be a forensic pathologist qualified or certified by the American board of pathology.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977.

82-430. Functions of the division. The functions of the division include operation of:

- (1) a laboratory of criminalistics; and
- (2) an office of forensic pathology.

History: En. 82-430 by Sec. 4, Ch. 530, L. 1977.

82-431. Authority to accept grants. The division of forensic science is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this act.

History: En. 82-431 by Sec. 5, Ch. 530,
L. 1977.

82-432. Board of forensic science—establishment-composition. (1) The board of forensic science is established within the department of justice.

(2) There shall be 15 board members appointed by the attorney general.

(3) The board shall be representative of state and local governments and law enforcement agencies and the medical profession. It shall include:

(a) an incumbent mayor recommended by the Montana league of cities and towns;

(b) an incumbent county commissioner recommended by the Montana association of counties;

(c) a prosecutor recommended by the Montana association of county attorneys;

(d) the chairman of the peace officers' standards and training advisory council;

(e) an incumbent chief of police recommended by the Montana chiefs of police association;

(f) an incumbent sheriff recommended by the Montana sheriffs and peace officers association;

(g) a deputy sheriff recommended by the Montana sheriffs and peace officers association;

(h) a police officer recommended by the Montana police protective association;

(i) a member recommended by the chief of the Montana highway patrol;

(j) a member recommended by the director of the department of fish and game;

(k) a member recommended by the attorney general;

(l) a medical doctor;

(m) a medical pathologist;

(n) a member possessing a graduate degree in one of the forensic sciences; and

(o) a county coroner recommended by the Montana coroners association.

History: En. 82-432 by Sec. 6, Ch. 530,
L. 1977.

82-433. Duties of board. The board of forensic science shall:

(1) establish a laboratory of criminalistics;

(2) appoint a state medical examiner and provide procedures consistent with this act for the employing of all necessary personnel; and

(3) establish policy and set all necessary procedures for the functioning of the division of forensic science.

History: En. 82-433 by Sec. 7, Ch. 530,
L. 1977.

82-434. Rules authorized. The board of forensic science is authorized to adopt rules necessary to accomplish the purposes of this act.

History: En. 82-434 by Sec. 8, Ch. 530,
L. 1977.

82-435. Termination of board. (1) All necessary functions of the board shall be completed within a 2-year period from the effective date of this act.

(2) Upon the termination of the 2-year period the board shall no longer exist. Following dissolution of the board, the attorney general is authorized to employ such personnel as may be necessary to conduct the affairs of the division of forensic science.

History: En. 82-435 by Sec. 9, Ch. 530,
L. 1977.

82-436. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this act;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing the director of the laboratory of criminalistics;

(6) appointing one or more associate medical examiners who serve at his pleasure; and

(7) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

History: En. 82-436 by Sec. 10, Ch. 530,
L. 1977.

82-437. Associate medical examiners—qualifications—remuneration.

(1) Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

(2) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(3) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

History: En. 82-437 by Sec. 11, Ch. 530,
L. 1977.

82-438. Purpose and function of laboratory. (1) The laboratory's purpose is to perform analysis of specimens submitted by all Montana

state, county, or city law enforcement officers, and all state agencies, and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

(3) The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this subsection shall be deposited in an account in the earmarked revenue fund in the state treasury and used to pay operation expenses of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530,
L. 1977.

82-439. Responsibilities of laboratory director. The laboratory director shall:

(1) be responsible to the state medical examiner for supervision and direction of the laboratory;

(2) appoint laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the division.

History: En. 82-439 by Sec. 13, Ch. 530,
L. 1977.

82-440. Removal of state medical examiner and laboratory director. The state medical examiner and the laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 82A-1014.

History: En. 82-440 by Sec. 14, Ch. 530,
L. 1977.

82-441. Exemption from liability. No criminal or civil action may arise against a medical examiner for performing an autopsy under this act.

History: En. 82-441 by Sec. 15, Ch. 530,
L. 1977.

82-442. Property of deceased—disposition. Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner or the coroner to the appropriate public administrator to be held until disposed of according to law.

History: En. 82-442 by Sec. 16, Ch. 530,
L. 1977.

82-443. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

History: En. 82-443 by Sec. 17, Ch. 530,
L. 1977.

82-444. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) A deputy coroner may be the coroner from another county.

History: En. 82-444 by Sec. 18, Ch. 530,
L. 1977.

82-445. Penalty. A person is guilty of a misdemeanor and may be fined not more than \$500 or imprisoned in the county jail for not more than one year, or both, if he:

(1) willfully fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, willfully touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

History: En. 82-445 by Sec. 19, Ch. 530,
L. 1977.

82-446. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, he shall make available in writing to the county attorney his determination as to the cause of death.

History: En. 82-446 by Sec. 20, Ch. 530,
L. 1977.

82-447. Records—custodian. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

History: En. 82-447 by Sec. 21, Ch. 530,
L. 1977.

CHAPTER 5—CLERK OF SUPREME COURT

Section

82-501. Election and term of office.

82-503. Fees.

82-505. Settlements and accounts to state auditor.

82-510. Court administrator—office created—appointment—terms—compensation.

82-511. Practice of law prohibited.

82-512. Duties.

82-513. Cooperation of court officers.

82-501. (370) Election and term of office. There must be a clerk of the supreme court, who must be elected by the electors at large of the

state, and hold his office for the term of six years from the first Monday of January next succeeding his election.

History: En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907; re-en. Sec. 370, R. C. M. 1921; amd. Sec. 45, Ch. 100, L. 1973. Cal. Pol. C. Secs. 749-758.

Amendments

The 1973 amendment deleted a final clause relating to the term of office of the first clerk elected under the 1889 constitution.

82-503. (372) Fees. (1) The clerk must collect in advance the following fees:

(a) for filing the transcript on appeal in any civil case appealed to the supreme court, \$20 payable by the appellant and \$10 payable by the respondent at the time of his appearance, as payment in full for all services rendered in the case up to the remittitur to the court below;

(b) for filing a petition for any writ, \$20, as payment in full for all services rendered in the cause;

(c) for a certificate of admission as an attorney, \$5;

(d) for making transcripts or copies of papers or records, 15 cents per folio;

(e) for comparing any document requiring a certificate, 5 cents per folio;

(f) for each certificate under seal, \$1.

(2) Three-fourths of all fees collected by the clerk must be paid into the state treasury and shall be credited to the general fund. One-fourth of all fees collected by him shall be paid to the public employees' retirement division of the department of administration to be credited to the Montana judges' retirement system account.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967; amd. Sec. 18, Ch. 344, L. 1977.

Compiler's Notes

The last paragraph of section 3, Chapter 218, Laws 1967, read: "This act shall be in full force and effect from and after its passage and approval." The act was approved March 1, 1967.

Amendments

The 1967 amendment increased filing fees on appeals to the supreme court, payable by the appellant, from \$10 to \$20, and by the respondent, from \$5 to \$10 and increased fees for filing petition for any writ from \$10 to \$20 in the first para-

graph; added "Three-fourths ($\frac{3}{4}$) of" at the beginning of the second paragraph; added the passage beginning "and one-fourth ($\frac{1}{4}$) of all fees collected" at the end of the second paragraph; and made minor changes in style.

The 1977 amendment inserted the subsection and subdivision designations; inserted "as payment" in subdivisions (1) (a) and (1)(b); deleted "and counselor" after "attorney" in subdivision (1)(c); substituted "paid to the public employees' retirement division of the department of administration to be credited to the Montana judges' retirement system account" at the end of subsection (2) for "paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund"; and made minor changes in phraseology, punctuation and style.

82-505. (374) Settlements and accounts to state auditor. The clerk is responsible and must account for and, in his settlement with the state auditor, must be charged with the full amount of all fees collected or chargeable and accruing in causes brought into the court for services

rendered therein up to the time of each settlement. The settlement must take place quarterly, and immediately thereafter the clerk must pay the amount found due into the treasury or to the public employees' retirement division, as provided in 82-503(2). He must also, at the end of each quarter, render to the state auditor, in such form as that officer prescribes, an account in detail and under oath of all fees chargeable and accruing in causes brought into court and not included in his previous accounts. His salary may not be allowed or paid until all fees so accruing for which he is chargeable have been accounted for and paid over.

History: En. Sec. 874, Pol. C. 1895; re-en. Sec. 303, Rev. C. 1907; re-en. Sec. 374, R. C. M. 1921; amd. Sec. 19, Ch. 344, L. 1977.

Amendments

The 1977 amendment added "or to the public employees' retirement division, as provided in 82-503(2)" to the end of the second sentence; and made minor changes in phraseology and punctuation.

82-510. Court administrator — office created — appointment — terms — compensation. There is established the office of court administrator. The supreme court shall appoint a court administrator. The court administrator shall hold his position at the pleasure of the court.

History: En. 82-510 by Sec. 1, Ch. 396, L. 1977.

Title of Act

An act to establish the office of court administrator.

82-511. Practice of law prohibited. Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

History: En. 82-511 by Sec. 2, Ch. 396, L. 1977.

82-512. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

- (1) prepare and present judicial budget requests to the legislature;
- (2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide such information to the legislature upon request;
- (3) recommend to the supreme court improvements in the judiciary; and
- (4) perform such other duties as the supreme court may assign.

History: En. 82-512 by Sec. 3, Ch. 396, L. 1977.

82-513. Cooperation of court officers. All court officers, including clerks of district courts, shall comply with requests made by the court administrator for information and statistical and financial data bearing on the business transacted by the courts.

History: En. 82-513 by Sec. 4, Ch. 396, L. 1977.

Separability Clause

Section 5 of Ch. 396, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its appli-

cations, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 6—DEPUTIES—APPOINTMENT BY CERTAIN OFFICERS— CLERKSHIP OF CONSOLIDATED BOARDS

82-601. (122) Deputy state officers.

Compiler's Notes

Section 3, Ch. 468, Laws 1977, deleted reference to "state treasurer" in this section.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

82-602. (123.1) Repealed.

Repeal

Section 82-602 (Sec. 1, Ch. 74, L. 1925; Sec. 90, Ch. 199, L. 1965), relating to con-

solidation of clerkships, was repealed by Sec. 103, Ch. 326, Laws of 1974.

CHAPTER 8—ENTOMOLOGIST, STATE—DUTIES AS TO AGRICULTURE

Section

82-804.2. [Transferred.]

82-805 to 82-814. [Transferred.]

82-801 to 82-804. (913 to 916) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 59, L. 1903; Secs. 1 to 4, Ch. 103, L. 1907; Sec.

1, Ch. 114, L. 1925), relating to the state entomologist, were repealed by Sec. 5, Ch. 75, Laws 1967.

82-804.1. Repealed.

Repeal

Section 82-804.1 (Sec. 1, Ch. 75, L. 1967), relating to appointment of the

state entomologist, was repealed by Sec. 173, Ch. 218, Laws of 1974.

82-804.2. [Transferred.]

Compiler's Notes

Section 127, Ch. 218, Laws of 1974 renumbered this section as sec. 75-8806.

82-804.3. Repealed.

Repeal

Section 82-804.3 (Sec. 3, Ch. 75, L. 1967), relating to biennial report of the

state entomologist, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-804.4. Repealed.

Repeal

Section 82-804.4 (Sec. 4, Ch. 75, L. 1967), relating to expenses of the state

entomologist, was repealed by Sec. 173, Ch. 218, Laws of 1974.

82-805 to 82-814. [Transferred.]

Compiler's Notes

Sections 128 to 130, 133 to 139, Ch. 218,

Laws of 1974 renumbered these sections as secs. 3-3101 to 3-3103, 3-3106 to 3-3112.

CHAPTER 9—ENUMERATION OF CERTAIN EX OFFICIO STATE OFFICERS

82-902. (117) Repealed.**Repeal**

Section 82-902 (Sec. 347, Pol. C. 1895), relating to the board of state prison com-

missions, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82-903. (118) Repealed.**Repeal**

Section 82-903 (Sec. 348, Pol. C. 1895), relating to the board of pardons, was re-

pealed by Sec. 96, Ch. 120, Laws of 1974; Sec. 1, Ch. 158, Laws of 1974.

82-904. (119) Repealed.**Repeal**

Section 82-904 (Sec. 349, Pol. C. 1895; Sec. 2, Ch. 67, L. 1973), relating to the

composition of the state board of land commissioners, was repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 10—EXAMINER, STATE

82-1001 to 82-1011. (209 to 216.1, 218) Repealed.**Repeal**

Sections 82-1001 to 82-1011 (Secs. 490, 491, 494, Pol. C. 1895; Secs. 1, 492 to 494, pp. 105, 107, L. 1897; Secs. 1, 491 to 494, Ch. 100, L. 1903; Sec. 1, Ch. 149, L. 1907; Sec. 1, Ch. 93, L. 1911; Secs. 1, 2, Ch. 84, L. 1913; Sec. 1, Ch. 84, L. 1915; Sec. 1, Ch. 30, L. 1923; Sec. 1, Ch. 78, L. 1923; Sec. 1, Ch. 85, L. 1925; Sec. 1, Ch. 81, L. 1927; Sec. 1, Ch. 33, L. 1929; Sec. 1, Ch. 164, L. 1937; Sec. 1, Ch. 179, L. 1939; Sec. 1, Ch.

98, L. 1953; Sec. 1, Ch. 169, L. 1955; Sec. 1, Ch. 137, L. 1959; Sec. 1, Ch. 125, L. 1963; Sec. 1, Ch. 141, L. 1963; Sec. 7, Ch. 225, L. 1963; Sec. 10, Ch. 237, L. 1967; Secs. 14 to 17, Ch. 249, L. 1967; Sec. 37, Ch. 93, L. 1969; Secs. 2, 3, Ch. 256, L. 1971; Sec. 1, Ch. 388, L. 1971; Sec. 1, Ch. 456, L. 1973), relating to duties and powers of state examiners, were repealed by Sec. 176, Ch. 431, Laws of 1975.

82-1014 to 82-1016. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 279, L. 1959; Secs. 1, 2, Ch. 81, L. 1961; Sec. 91, Ch. 199, L. 1965), relating to the

examination of accounts of state institutions, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 11—EXAMINERS, STATE BOARD OF—ADVERTISING FOR
BIDS—STATE PRINTING CONTRACT AND SUPPLIES**Section**

82-1105. Records.

82-1117. Disqualifications.

82-1131. Bids required—advertising.

82-1131.1. Repeal clause.

82-1133. Bid security.

82-1136. State purchasing not affected.

82-1147. Contract provisions necessary—federal funds.

82-1149. Establishment of prices for state printing.

82-1150. Folio measurement.

82-1104. Repealed.**Repeal**

Section 82-1104 (Sec. 2, Ch. 69, L. 1943; Sec. 14, Ch. 126, L. 1977), relating

to prison made goods, was repealed by Sec. 11, Ch. 61, Laws 1977 and by Sec. 9, Ch. 97, Laws 1977.

82-1105. (234) Records. The department of administration must keep a record of all the board's proceedings, and any member may have his dissent to the action of the majority, upon any matter, entered upon the record.

History: Sec. 228, Rev. C. 1907; re-en. Sec. 234, R. C. M. 1921; amd. Sec. 8, Ch. 97, L. 1961; amd. Sec. 53, Ch. 326, L. 1974. See also history of Sec. 82-1101.

Amendments

The 1974 amendment substituted "The department of administration" for "The board"; and made minor changes in phraseology.

82-1106 (235) Repealed.

Repeal

Section 82-1106 (Sec. 229, Rev. C. 1907), relating to the board of examiner's

power to establish rules and regulations, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82-1117. (246) Disqualifications. No member of the board may act on any claim in which he is interested or for expenditures incurred in his office or be present when the decision is made.

History: Sec. 240, Rev. C. 1907; re-en. Sec. 246, R. C. M. 1921; amd. Sec. 10, Ch. 61, L. 1977. See also history of Sec. 82-1101.

Amendments

The 1977 amendment substituted "may" for "must"; and made minor changes in phraseology and punctuation.

Repealing Clause

Section 11 of Ch. 61, Laws 1977 read "Sections 59-705, 78-737 through 78-746, 78-1001 through 78-1010, 78-1202, 78-1203, 78-1209, 79-110, 79-802, 79-811, 79-812, 79-1102, 79-1103, 79-1104, 79-1603, 79-2701, 82-1104, 82A-209 and chapter 17 of Title 79, R. C. M. 1947, are repealed."

82-1131. (259.1) Bids required—advertising. (1) It is unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is \$10,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform such work and stating the time and place bids will be considered.

(2) All such work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If no bid for such work is accepted, the work may not be done or accomplished. The work may be readvertised from time to time until awarded to a qualified competitive bidder.

History: En. Sec. 1, Ch. 149, L. 1927; amd. Sec. 1, Ch. 142, L. 1961; amd. Sec. 1, Ch. 97, L. 1977.

Amendments

The 1977 amendment divided the section

into subsections; increased the amount involved in subsection (1) from \$1,000 or more to \$10,000 or more; and made minor changes in phraseology, punctuation and style.

82-1131.1. Repeal clause. Section 82-1131 does not apply to work done by inmates at an institution in the department of institutions.

History: En. Sec. 2, Ch. 142, L. 1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "Sec-

tion 82-1131" for "The provisions of this act (82-1131, 82-1131.1)"; deleted "shall not repeal to any extent the provisions of section 80-731"; and made minor changes in phraseology and style.

82-1133. Bid security. Each bid must be accompanied by bid security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.

History: En. Sec. 3, Ch. 149, L. 1927; amd. Sec. 2, Ch. 193, L. 1977; amd. Sec. 1, Ch. 487, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 193 and once by Ch. 487. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 193, Laws of 1977, substituted "each bid must be accompanied by * * * state of Montana" for "a certified check for 5% of the amount of his bid."

Chapter 487, Laws of 1977, deleted the first two clauses in the section; and rewrote the remainder of the section. For prior version, see parent volume.

82-1136. (259.6) State purchasing not affected. Nothing contained in section 82-1131 through 82-1135 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.

History: En. Sec. 6, Ch. 149, L. 1927; amd. Sec. 55, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of administration functions relating to state purchasing" for "state purchasing department, or the purchasing agent of the state"; and made minor changes in phraseology.

82-1137. (260) State printing—union label, etc.

Cross-References

Printing defined, sec. 19-103.1.

82-1139. (262) Repealed.

Repeal

Section 82-1139 (Sec. 708, Pol. C. 1895; Sec. 56, Ch. 326, L. 1974), relating to

bonds for supply contracts, was repealed by Sec. 9, Ch. 97, Laws 1977.

82-1144. (267) Repealed.

Repeal

Section 82-1144 (Sec. 713, Pol. C. 1895), relating to interest of government officers

in state printing contracts, was repealed by Sec. 3, Ch. 43, Laws 1973. For new law, see sec. 82-1922.

82-1147. (269.1) Contract provisions necessary—federal funds. In all contracts let for state, county, municipal, and school construction, repair, or maintenance work under any of the laws of this state when the funds for the projects are supplied in whole or in part from funds of the United States government, it is lawful to insert in each of the contracts any

provisions that are or will be necessary to have such contract conform to any federal statutes or regulation under which such funds are supplied.

History: En. Sec. 1, Ch. 43, Ex. L. 1933; amd. Sec. 2, Ch. 97, L. 1977.

Amendments

The 1977 amendment substituted "or maintenance work" for "and maintenance

work" near the beginning of the section; deleted "the provisions of the National Industrial Recovery Act" before "any federal statutes"; and made minor changes in phraseology and punctuation.

82-1149. (276) Establishment of prices for state printing. Hereafter in all cases and instances where any publication is required by law, or is duly authorized, to be made, executed or accomplished by or for or on behalf of the state of Montana, or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof, or any of the officers, agents or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana, and of general bona fide and paid circulation with second class mailing privilege, and having been printed and published continuously in the state of Montana for at least twelve (12) months immediately preceding such publication; the price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication, set in the same size type and published for the same number of insertions.

History: En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969; amd. Sec. 1, Ch. 385, L. 1973.

Amendments

The 1969 amendment increased the maximum rates for standard work from \$2 to \$2.25 per folio of 100 words for the first insertion, and from 90¢ to \$1.25 per folio for each subsequent insertion; and increased the maximum rates for rule and figure work from \$3 to \$3.75 per folio for the first insertion, and from 90¢ to \$1.25 per page for each subsequent insertion.

The 1973 amendment substituted "the minimum going rate charged any other

advertiser for the same publication, set in the same size type and published for the same number of insertions" at the end of the section for "the following rate and standard hereby established and prescribed as the maximum rate and standard for all publications as aforesaid" and for paragraphs (a) and (b) setting out specific maximum rates.

Repealing Clause

Section 2 of Ch. 307, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Cross-References

Printing defined, sec. 19-103.1.

82-1150. (277) Folio measurement. (1) The following is the basis of measurement for the computation of folios in the various sizes of type, when set in a column 13 ems pica wide, and constitutes a folio within the meaning of 82-1149 through 82-1153:

- (a) 12 lines of 6-point type;
- (b) 14 lines of 7-point type;
- (c) 16 lines of 8-point type;
- (d) 18 lines of 9-point type; or
- (e) 20 lines of 10-point type.

- (2) A carefully verified actual count shall be made of the folio.

History: En. Sec. 2, Ch. 157, L. 1921; re-en. Sec. 277, R. C. M. 1921; amd. Sec. 3, Ch. 97, L. 1977.

Amendments

The 1977 amendment rewrote the section. For prior version, see parent volume.

82-1157. (283.1) Preference of Montana printers, etc.**Compiler's Notes**

Section 101, Ch. 326, Laws 1974, substituted "department of administration" in this section for "state purchasing agent."

Cross-References

Printing defined, sec. 19-103.1.

CHAPTER 12—FIRE MARSHAL, STATE**Section**

- 82-1201. Fire marshal bureau—fire prevention advisory commission.
- 82-1202. Powers and duties of state fire marshal.
- 82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for licensing—providing for a penalty for violation.
- 82-1208. Special deputy fire marshals—acting fire marshal—fire marshal's employees.
- 82-1209. Investigation of fires.
- 82-1211. Penalty for violation of law.
- 82-1215. Duties of marshal and deputies in case of violation of law—false swearing or contemptuous conduct of witnesses.
- 82-1218. Entering of buildings for purpose of examination.
- 82-1222. Proceedings on failure to comply with order.
- 82-1226. Records of fire marshal.
- 82-1229. Annual reports.
- 82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.

82-1201. (2737) Fire marshal bureau—fire prevention advisory commission. (1) There is a fire marshal bureau in the department of justice which is under the supervision and control of the attorney general.

(2) The chief of the fire marshal bureau shall be appointed by the attorney general and shall serve at his pleasure. The chief of the fire marshal bureau is the state fire marshal.

(3) A person appointed state fire marshal shall have:

(a) at least 10 years of progressively responsible experience in fire protection;

(b) a 2-year associate degree in fire protection engineering from a recognized institution of higher education and 2 years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) The attorney general shall create a fire marshal advisory council in accordance with procedures provided in 82A-110.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R. C. M. 1921; amd. Sec. 1, Ch. 229, L. 1967; amd. Sec. 33, Ch. 187, L. 1977; amd. Sec. 1, Ch. 519, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 187 and once by Ch. 519. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

The 1967 amendment completely rewrote this section. Prior to amendment,

it read, "There is hereby created and established the office of state fire marshal, which shall be a department of and under the supervision and control of the state auditor and commissioner of insurance ex officio."

Chapter 187, Laws of 1977, substituted "a fire marshal bureau in the department of justice which is under the supervision and control of the attorney general" at the end of subsection (1) for "an office of state fire marshal, which is under the supervision and control of the commissioner of insurance"; substituted "chief of the fire marshal bureau shall be appointed by the attorney general" in the first sentence

of subsection (2) for "state fire marshal shall be appointed by the commissioner of insurance"; added the second sentence of subsection (2); deleted subsection (4), which directed the commissioner of insurance to appoint a fire prevention advisory commission composed of the commissioner and one person representing each of the following: the fire insurance industry, industry, full-time paid fire departments, volunteer fire departments, architects of the state, and the public with the initial members appointed for terms of one to four years and later terms to be for four years; appointed members were reimbursed for meetings at the rate of \$20 per day plus actual expenses; the commissioner served as chairman, and the

state fire marshal served as secretary; and made minor changes in phraseology, punctuation and style.

Chapter 519, Laws of 1977, made the same changes in subsections (1) and (2) that were made by Chapter 187; substituted "a 2-year associate degree in fire protection" at the beginning of subdivision (3)(b) for "a degree in"; substituted subsection (4) for a subsection (4) as shown above; and made minor changes in phraseology and style.

Cross-References

Advisory commission abolished, sec. 82A-1208.

Marshal's office abolished and functions transferred, sec. 82A-1202(5).

82-1202. (2737.1) Powers and duties of state fire marshal. (1) For the purpose of reducing the state's fire loss, the state fire marshal shall:

(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety;

(c) inspect public, business, or industrial buildings and require conformance to law and rules promulgated under the provisions of this chapter;

(d) assist local fire and law enforcement authorities in arson investigations and supervise such investigations when, in his judgment, supervision is necessary;

(e) review all training programs on investigation of accidental and incendiary fires;

(f) provide fire prevention and fire protection information to public officials and the general public;

(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h) be the state entity primarily responsible for promoting fire safety at the state level, and to represent the state in structural fire matters;

(i) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services; and

(j) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices.

(2) The state fire marshal may:

(a) adopt rules necessary for safeguarding life and property from the hazards of fire and explosion and carrying into effect the fire prevention laws of this state; and

(b) if necessary to safeguard life and property under rules promulgated pursuant to this section, maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

(3) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 187 and once by Ch. 519. The code commissioner has made a composite section embodying some, but not all, the changes made by both amendments.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first sentence in subdivision (4), substituted "adopt" for "promulgate" before "necessary rules"; in the second sentence, inserted "R. C. M. 1947" after "82-1202.2"; and, in the last sentence, deleted "promulgated by the fire marshal" after "fire prevention rules" and substituted "the fire marshal" for "he" before "may maintain"; and added subdivision (5).

The 1974 amendment substituted "department of administration" for "state building code council" in subdivision (5).

The 1975 amendment deleted from the end of the first sentence in subdivision (4) "after consultation with the fire prevention advisory commission and approval by the commissioner of insurance"; deleted a former second sentence reading "No rule shall become effective until after

a public hearing held in the manner described in section 82-1202.2, R. C. M. 1947"; and inserted the present second sentence in subdivision (4).

Chapter 187, Laws of 1977, inserted subsection designations; redesignated former subdivisions (1) to (3) as subdivisions (1)(a) to (1)(c); substituted "commissioner of higher education" in subdivision (1)(b) for "executive secretary of the university system"; divided former subdivision (4) into subdivision (1)(d) and subsections (2) and (3); deleted subdivision (5) which is now designated subsection (3); and made minor changes in phraseology, punctuation and style.

Chapter 519, Laws of 1977, inserted subsection designations; redesignated former subdivisions (1) to (3) as subdivisions (1)(a) to (1)(c); inserted "For the purpose of reducing the state's fire loss" at the beginning of subsection (1); substituted "commissioner of higher education" in subdivision (1)(b) for "executive secretary of the university system"; inserted subdivisions (1)(d) through (1)(j); redesignated former subdivision (4) as subsections (2) and (4); redesignated former subdivision (5) as subsection (3); and made minor changes in phraseology, punctuation and style.

Repealing Clauses

Section 2 of Ch. 169, Laws 1975 read "Section 82-1202.2, R. C. M. 1947, is repealed."

Section 3 of Ch. 519, Laws 1977 read "Section 82A-1208, R. C. M. 1947, is repealed."

82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for licensing—providing for a penalty for violation.

(1) Rules promulgated by the state fire marshal by authority of section 82-1202, R. C. M. 1947, shall be reasonable and calculated to effect the purposes of this act. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance or use of the following: structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire

emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibres; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of administration and filing with the secretary of state.

(3) Standards of the National Fire Protection Association, United States Bureau of Standards, American Insurance Association Standards may be adopted in whole or in part by reference.

(4) A natural person must obtain a certificate of registration from the state fire marshal prior to servicing or installing of fire extinguishers, fire alarm systems or fire extinguishing systems. A person or firm must obtain from the fire marshal a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems, prior to engaging in such business.

(a) Applications for licenses, permits or certificates, shall be made on a form prescribed by the state fire marshal. The fire marshal shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed, and who pays the required fee. The fire marshal shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the fire marshal, and who pays the required fee. The fire marshal shall issue a sales permit to an applicant who submits the information required by the fire marshal on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the state fire marshal, and who pays the required fee.

(b) The state fire marshal may conduct inspections, examinations or hearings prior to the issuance of licenses, permits or certificates. The state fire marshal may revoke, suspend or refuse to issue a license, permit or certificate for violation of the provisions of this chapter or any rules and regulations promulgated by the fire marshal under applicable law.

(c) The state fire marshal or his representative shall charge a fee, not to exceed a total of twenty-five dollars (\$25) for the inspection and issuance of licenses, permits and certificates.

(d) All fees collected under this section shall be paid into the general fund.

(5) Any person violating any rule made under the provisions of this section shall be guilty of a misdemeanor.

<p>History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975.</p>	<p>Amendments Chapter 120 of Laws 1969 substituted a requirement that rules promulgated by the state fire marshal "be reasonable and calculated to effect the purpose of this act" for</p>
---	---

a requirement that rules promulgated by the state fire marshal "establish minimum standards of fire protection requirements" in subsection (1), and added subsection (4).

Chapter 366 of Laws 1969 inserted subsection (2) and renumbered former subsection (2) as subsection (3).

The 1974 amendment substituted "department of administration" for "state building code council" in subsection (2).

The 1975 amendment inserted subsection (4); and redesignated former subsection (4) as subsection (5).

Repealing Clause

Section 27 of Ch. 366, Laws 1969 read "Sections 66-2424, 66-2818, 69-2101 through 69-2103, 69-3701 through 69-3719, and 75-3103, R. C. M. 1947, are repealed."

Effective Date

Section 2 of Ch. 426, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 14, 1975.

82-1202.2. Repealed.

Repeal

Section 82-1202.2 (Sec. 4, Ch. 229, L. 1967; Sec. 26, Ch. 366, L. 1969), relating

to adoption of rules for state fire marshal was repealed by Sec. 2, Ch. 169, Laws of 1975.

82-1203, 82-1204. (2737.2, 2738) Repealed.

Repeal

These sections (Sec. 2, Ch. 148, L. 1911; Sec. 2, Ch. 124, L. 1929), relating to the

appointment of the state fire marshal and to violations of section 82-1202, were repealed by Sec. 14, Ch. 229, Laws 1967.

82-1208. (2742) Special deputy fire marshals—acting fire marshal—fire marshal's employees. (1) In an emergency or during the absence or disability of the state fire marshal, the attorney general may appoint an acting fire marshal, who shall perform the duties of the office or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

(2) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties. When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed \$40 a day plus travel expenses as provided for in 59-538, 59-539, and 59-801, as amended.

(3) The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R. C. M. 1921; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted "attor-

ney general" for "commissioner of insurance" in subsection (1); and increased the rate of pay of special deputy fire marshals from \$20 to \$40 per day.

The 1977 amendment substituted "travel expenses as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (2) for "per diem allowance for expenses and mileage at the same rates specified for state employees"; and made minor changes in punctuation and style.

82-1209. (2743) Investigation of fires. (1) The cause, origin, and circumstances of each fire, by which property has been destroyed or damaged, shall be investigated to determine the exact cause and circum-

stances. The state fire marshal may superintend and direct the investigation if he deems it necessary.

(2) If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation. If it appears that the fire was of suspicious origin, or if there was a loss of human life, the official responsible for the investigation shall notify the state fire marshal within twenty-four (24) hours, and shall file a written report of the cause with the state fire marshal within ten (10) days.

(3) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the state fire marshal of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the state fire marshal.

(4) Each official responsible for investigating fires shall file a fire incident report on each and every fire with the state fire marshal. Reports shall be on forms, and shall contain information, prescribed by the state fire marshal. These reports shall be sent to the state fire marshal on a weekly basis.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R. C. M. 1921; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973.

Amendments

The 1967 amendment substantially re-wrote this section. For previous text, see parent volume.

The 1973 amendment substituted "the exact cause and circumstances" for "whether the fire was the result of carelessness or design" in the first sentence of subsection (1); substituted "If the property was insured" for "If it appears that the fire was of suspicious origin, if there

was a loss of human life, or if the property loss exceeded one hundred dollars" at the beginning of subsection (3); substituted "state fire marshal" for "official responsible for investigating the fire" in the middle part of subsection (3); added "on forms furnished by the state fire marshal" at the end of subsection (3); deleted "On or before February 15 of each year" from the beginning of subsection (4); substituted "incident report on each and every fire" in the first sentence of subsection (4) for "loss report for the immediately preceding calendar year"; and added the third sentence to subsection (4).

82-1210. (2744) Repealed.

Repeal

This section (Sec. 7, Ch. 148, L. 1911), relating to fire marshal's investigations,

was repealed by Sec. 14, Ch. 229, Laws 1967.

82-1211. (2745) Penalty for violation of law. Any person who fails to comply with the requirements of section 82-1209, R.C.M. 1947, shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R. C. M. 1921; amd. Sec. 7, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "Any person who fails to comply with the re-

quirements of section 82-1209, R. C. M. 1947" for "An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter"; and made minor changes in style.

82-1215. (2749) Duties of marshal and deputies in case of violation of law—false swearing or contemptuous conduct of witnesses. (1) If the

state fire marshal or a deputy fire marshal is notified by an officer or other person or knows of a violation of the laws of this state relating to fires, he shall immediately and diligently inquire into the facts of the violation. The state fire marshal or a deputy fire marshal is authorized to have a subpoena issued for a person he has reason to believe has information or knowledge concerning a violation of the laws relating to fires. The subpoena shall command the person to appear before a justice of the peace at the time and place designated in the subpoena to testify concerning a violation of the laws relating to fires. For the purpose of having a subpoena issued, the state fire marshal or deputy fire marshal may file with a justice of the peace a written statement signed by the state fire marshal or deputy fire marshal, alleging a violation of the laws of this state relating to fires and naming the witness to be subpoenaed. The justice of the peace shall issue a subpoena for the witness named commanding him to appear before the justice of the peace at the time designated in the subpoena to testify concerning a violation of the laws relating to fires. The subpoena may be served by the sheriff or any peace officer of the county or by any other person who is a citizen of the county and shall be served and returned to the state fire marshal, deputy fire marshal, or justice of the peace in the same manner that subpoenas are served and returned when issued by justices of the peace. The witness shall be sworn to make true answers to all questions touching the matters under investigation propounded to him, and his testimony shall be reduced to writing and he signed by him. For the purpose of this act, the state fire marshal or a deputy fire marshal is authorized to administer an oath to a person appearing as a witness in a proceeding investigating a violation of the laws relating to fires. False swearing in such a proceeding is perjury and shall be punished as such. Disobedience to a subpoena, refusal to be sworn as a witness or to sign the testimony given by a witness, or refusal to answer a proper question propounded to a witness is a misdemeanor, and a person convicted thereof shall be fined no more than \$100 or be imprisoned in the county jail for any term not to exceed 90 days, or both.

(2) A justice of the peace, when acting under the provisions of this act, may adjourn proceedings from time to time and punish a witness for contempt because of his refusal to be sworn, to answer questions as a witness, or to sign his testimony. The justice of the peace may compel the attendance of witnesses by attachment. If the testimony so taken discloses the fact that an offense has been committed, the county attorney of the county in which the offense was committed shall prosecute the person committing the offense in the same manner as in other criminal cases.

History: En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R. C. M. 1921; amd. Sec. 35, Ch. 187, L. 1977.

Amendments

The 1977 amendment inserted the subsection designations; and made many minor changes in phraseology, punctuation and style. For prior version, see parent volume.

82-1218. (2752) Entering of buildings for purpose of examination. The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is estab-

lished, or the county sheriff where no fire department exists, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R. C. M. 1921; amd. Sec. 8, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "municipality or district" for "city or village" before "where a fire"; substituted "county sheriff" for "mayor of a city or village"

before "where no fire"; deleted "or the justice of the peace of a township in territory without the limits of a city or village" before "at all reasonable hours"; and substituted "determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety" for "examination" at the end of the section.

82-1222. (2753.3) Proceedings on failure to comply with order. If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure, as herein provided, within the time fixed by the court, in case a trial is had therein, then the state fire marshal or any other officer authorized in section 82-1218, shall proceed to cause such building or structure to be altered, repaired or demolished in accordance with the directions contained in such order; and where a building or structure is demolished in accordance with such order the state fire marshal or any other officer authorized in section 82-1218, may sell or dispose of the salvaged materials therefrom at public auction upon five days' posted notice. This person shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him and the amount, if any, received from such salvage sale, to the court for approval and allowance; and thereupon the court shall examine, correct if necessary and allow said expense account; and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated, and if the amount thereof is not paid by the owner or other party in interest within three (3) months after the account has been examined and approved by the court the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale shall exceed the expense incurred by the governmental unit the court shall direct the payment of the surplus to those parties with encumbrances, mortgages or liens on the real estate, in order of their priority, and any surplus thereafter to the owner, or the payment of the same into court for their use and benefit.

History: En. Sec. 2753-C, Ch. 139, L. 1929; amd. Sec. 1, Ch. 418, L. 1975.

Amendments

The 1975 amendment inserted "or any other officer authorized in section 82-1218"

twice in the first sentence; substituted "three months" for "six months" in the second sentence; deleted "as aforesaid" after "approved by the court" in the second sentence; substituted "paid into the treasury of the governmental unit which

incurred the expenses" for "paid into the state treasury and credited to the fund of the state fire marshal" in the second sentence; substituted "governmental units" for "state fire marshal" in the last sentence; substituted "those parties with en-

cumbrances, mortgages or liens on the real estate, in order of their priority, and any surplus thereafter to the owner" for "the owner" in the last sentence; and made minor changes in phraseology and punctuation.

82-1226. (2756) Records of fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigations under the provisions of this chapter; and, except for the testimony given during an investigation, the record shall be open at all times to public inspection.

History: En. Sec. 19, Ch. 148, L. 1911; re-en. Sec. 2756, R. C. M. 1921; amd. Sec. 36, Ch. 187, L. 1977.

Amendments

The 1977 amendment made minor changes in punctuation and phraseology.

82-1227, 82-1228. (2757, 2758) Repealed.

Repeal

These sections (Secs. 20, 21, Ch. 148, L. 1911), relating to the compensation of

fire department officials, were repealed by Sec. 14, Ch. 229, Laws 1967.

82-1229. (2759) Annual reports. The state fire marshal shall make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary.

History: En. Sec. 22, Ch. 148, L. 1911; re-en. Sec. 2759, R. C. M. 1921; amd. Sec. 37, Ch. 187, L. 1977.

Amendments

The 1977 amendment substituted references to the attorney general for references to the commissioner of insurance; and made minor changes in phraseology and punctuation.

82-1230. (2760) Oath of marshal and deputy.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

82-1231. (2761) Tax on fire insurance premiums for maintenance of state fire marshal's office. Each insurer authorized to effect insurance risks enumerated in subsection two of section 11-1919, doing business in this state shall pay to the state auditor and commissioner of insurance ex officio, during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of three-fourths of one per cent ($\frac{3}{4}$ of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. re-en. Sec. 2761, R. C. M. 1921; amd. Sec. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 110, L. 1971.

Amendments

The 1969 amendment raised the tax from "one-fourth of one per cent ($\frac{1}{4}$ of 1%)" to "one-half of one per cent ($\frac{1}{2}$ of 1%)."

The 1971 amendment increased the tax from one-half of one per cent to three-fourths of one per cent; and made a minor change in phraseology.

82-1232. (2762) Repealed.**Repeal**

Section 82-1232 (Sec. 25, Ch. 148, L. 1911), relating to powers of commissioner

of insurance, was repealed by Sec. 39, Ch. 187, Laws 1977.

CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY**Section**

82-1304.1. Vacancy in office of governor and lieutenant governor.

82-1304.2. President of senate, speaker of house unable to assume office of governor—election by legislature.

82-1304.3. Successor to serve until next general election.

82-1304.4. Governor and lieutenant governor incapacitated.

82-1304.5. Duties and rights of acting governor.

82-1311. "Governor-elect" defined.

82-1312. Duties of department of administration.

82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect.

82-1314. Funds—department of administration to request an appropriation.

82-1315. Review of executive branch—report to legislature.

82-1301. (124) Powers and duties of governor.**Compiler's Notes**

Sections 23-103 to 23-106 referred to in subdivision 10, were repealed by Sec. 248,

Ch. 368, Laws of 1969. For similar provisions in current law, see secs. 23-2901 to 23-2903.

82-1304.1. Vacancy in office of governor and lieutenant governor. (1)
If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of section 2 [82-1304.2] hereafter.

History: En. Sec. 1, Ch. 29, L. 1973.

office of governor to implement article VI, section 6(1) and section 14(7) of the 1972 Montana constitution.

Title of Act

An act to provide for succession to the

82-1304.2. President of senate, speaker of house unable to assume office of governor—election by legislature. If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor. When the speaker of the house becomes governor, the legislature will meet in joint session, and shall elect a lieutenant governor.

History: En. Sec. 2, Ch. 29, L. 1973.

82-1304.3. Successor to serve until next general election. The successor to the governor and the lieutenant governor shall serve until the next

general election and shall have all the powers, duties and emoluments of the respective offices.

History: En. Sec. 3, Ch. 29, L. 1973.

82-1304.4. Governor and lieutenant governor incapacitated. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

History: En. Sec. 4, Ch. 29, L. 1973.

82-1304.5. Duties and rights of acting governor. An acting governor shall have all the rights, duties and emoluments of the office of governor while he is so acting.

History: En. Sec. 5, Ch. 29, L. 1973.

82-1309. Enemy attack upon United States and governor, etc.

Cross-References

Line of succession extended to legislators, sec. 82-3802.

82-1310. Emergency temporary seat of government—designation.

Cross-References

Moving seat of government after attack, sec. 82-3807.

82-1311. "Governor-elect" defined. As used in this act, unless the context clearly indicates otherwise:

(1) "Governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

History: En. Sec. 1, Ch. 47, L. 1969.

Title of Act

Compiler's Notes

As enacted, this section contained no subdivision (2).

An act to provide for orderly transition of state government after the election of a new governor by providing funds and other necessary assistance for the governor-elect.

82-1312. Duties of department of administration. The department of administration shall provide the governor-elect and his necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

History: En. Sec. 2, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department of administration" for "state controller."

82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect.

The governor-elect may obtain the assistance of persons of his own choosing, between the general election and inauguration, and they shall receive reasonable compensation for their services. These persons shall be state employees, but they shall not be subject to any civil service or personnel laws or rules of the state. In addition, the governor-elect may request that the department of administration assign one (1) or more employees of the department of administration to assist the governor-elect and his staff in the study and interpretation of information. Employees of the department of administration shall be assigned for the time necessary between the general election and the inauguration.

History: En. Sec. 3, Ch. 47, L. 1969; department of administration" for "the state controller" after "the governor-elect may request that."

Amendments

The 1974 amendment substituted "the

82-1314. Funds—department of administration to request an appropriation. The funds necessary to carry out the provisions of this act shall be included in the appropriation request of the department of administration to the legislative assembly meeting in regular session immediately prior to a general election when a governor will be chosen.

History: En. Sec. 4, Ch. 47, L. 1969; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department of administration" for "state controller."

82-1315. Review of executive branch—report to legislature. (1) The office of the governor shall continuously study, and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency and the governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch.

(2) The governor shall submit a report to each regular legislative session concerning the duties of his office under subsection (1) of this section and his recommendations, if any, for the transfer of functions between agencies, the elimination of unnecessary functions, or other recommendations to improve the manageability of the executive branch.

History: En. 82-1315 by Sec. 1, Ch. 238, L. 1973.

Title of Act

An act requiring the office of the governor to review the executive branch of state government and report to the legislature.

Compiler's Notes

Chapter 207 of Laws 1975 repealed section 2 of Ch. 238, Laws 1973, which provided that this section should expire after June 30, 1975.

CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section

- 82-1501. State board of hail insurance—creation and powers—insurance, how effected.
 82-1502. Maximum insurance.
 82-1506. Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates.

- 82-1507. Scope and object of levy—reserve.
82-1512. Duty of agent of the department of revenue—election of benefits of law.
82-1515. Appraisers—appointment—qualifications and duties.
82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.
82-1517. Payment of losses.
82-1519. Compensation of chairman and officers—report.

82-1501. (350) State board of hail insurance—creation and powers—insurance, how effected. (1) There is a state board of hail insurance of five members consisting of the state auditor, the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor from names submitted by farmer organizations having a general membership throughout the state. The governor shall designate one of the appointive members to act as chairman of the board. Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor, and shall also appoint one of the board for chairman in case of a vacancy in that office.

(2) Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All members of the board shall be subject to removal for cause by the governor; the board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make rules as it may from time to time find practical, necessary and beneficial for the administration of this act. It shall prescribe blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act; it shall prescribe a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, the form to be submitted by the agent of the department of revenue in each county at the time in which the regular assessments of property are made by the agents, to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not.

(3) Every farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the properly filled out form not later than August 15th, and shall be chargeable with the tax on lands growing crops subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor. Provided, however, that this act shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this act.

History: En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 58, Ch. 391, L. 1973; amd. Sec. 140, Ch. 218, L. 1974; amd. Sec. 2, Ch. 1, Ch. 141, L. 1921; re-en. Sec. 350, E. C. 468, L. 1977.
M., 1921; amd. Sec. 1, Ch. 40, L. 1923;

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "county assessor" and "agents" for "assessors" in the third sentence of subdivision (2) in order to implement article VIII, section 3 of the 1972 constitution.

The 1974 amendment substituted "director of agriculture" for "commissioner of agriculture, labor and industry" and "farmer organizations" for "farmer societies" in subsection (1); deleted "to serve for three years" after "appointive members" in the second sentence of subsection (1); substituted "administration

of this act" for "conduct of the department of hail insurance, subject to the provisions of this act" in the second sentence of subsection (2); deleted "It shall have full charge of said department as herein provided for" and "and furnish such forms to all public officers respectively charged with the performance of any official duty in connection therewith" from the second sentence of subsection (2); and made minor changes in phraseology and punctuation.

The 1977 amendment substituted "state auditor" for "state treasurer" in the first sentence of subsection (1).

82-1502. (350.1) Maximum insurance. When the reserve fund is determined actuarially sound, as provided in 82-1507, the board may write not more than \$24 insurance on each acre of grain which is on nonirrigated land and not more than \$48 per acre on irrigated land. When more than one party desires hail insurance on the same crop, each party is entitled to the share of the maximum provided per acre as represented by his interest in the crop. Either party may insure his share in the crop for any amount up to and including the maximum per acre if the others waive their right to insure.

History: En. Sec. 2, Ch. 40, L. 1923; amd. Sec. 1, Ch. 33, L. 1949; amd. Sec. 1, Ch. 200, L. 1953; amd. Sec. 1, Ch. 154, L. 1975; amd. Sec. 31, Ch. 13, L. 1977.

Amendments

The 1975 amendment substituted "When the fund is determined actuarially sound, as provided in section 3 [82-1507] of this act, the board may write not more than

twenty-four dollars (\$24) insurance" at the beginning of the section for "No more than twelve dollars (\$12) insurance shall be written"; and increased the maximum for irrigated land from \$24 to \$48 per acre.

The 1977 amendment inserted "reserve" before "fund" near the beginning of the first sentence; and made minor changes in phraseology, punctuation and style.

82-1506. (351) Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates.

(1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate, accurately as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this act, to the department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis. It is hereby provided, however, that such tax may not exceed in any one year \$2.40 per acre on lands sown to grain crops on non-irrigated lands, \$4.80 per acre on irrigated lands, or \$2.40 per acre on lands producing hay crops. If the tax required to pay the estimated losses, interest on warrants, and costs of administration is less than \$1.20 per acre on lands sown to grain crops on nonirrigated lands and \$2.40 per acre on irrigated lands and a proportionate amount on lands sown to hay crops, the board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

(2) In addition to the lien created in subsection (3) on the land of the insured, the levy for such hail insurance shall constitute a lien on the crops insured with the exception that the crop lien may not apply to owners of unencumbered land or to the land or crops of those who pay cash for hail insurance. The applications of these persons may not be filed with the county clerk and recorded as provided for in 82-1503. The crop lien shall be included in all applications for hail insurance, with the above exceptions, and shall be enforced as provided in 82-1509 and 82-1510 against all insured except those owning unencumbered land or those who have paid cash for hail insurance.

(3) The department of revenue shall prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively are chargeable to the lands of each taxpayer who elects to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. The lien may in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured by the county treasurer in the same manner as are all other notices of taxes due. The assessment shall be payable at the office of the county treasurer of each respective county. All insurance levies, whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full and not in semiannual payments, on or before November 30 of each year in which such levies are made.

(4) The state board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state which rates shall be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest may not be less than \$1.20 per acre on lands sown to grain crops and a proportionate amount on lands sown to hay crops.

(5) Notice of the various rates established for any year shall be plainly printed on the application for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the state board of hail insurance for each of the various districts as established, in such proportions as will in its judgment be fair and equitable.

History: En. Sec. 2, Ch. 169, L. 1917; 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Sec. 1, Ch. 54, L. 1931; amd. Sec. 2, Ch. 33, Ch. 141, L. 1921; re-en. Sec. 351, R. C. M. L. 1949; amd. Sec. 2, Ch. 200, L. 1953;

amd. Sec. 59, Ch. 391, L. 1973; amd. Sec. 2, Ch. 154, L. 1975; amd. Sec. 32, Ch. 13, L. 1977.

The 1975 amendment doubled the tax and interest amounts in subsection (1).

The 1977 amendment made minor changes in phraseology, punctuation and style.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsections (1) and (3).

82-1507. (352) Scope and object of levy—reserve. (1) In making the levy provided in 82-1506, the state board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants, and losses as the same shall be settled and adjusted by the board, including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

(2) If at the end of any hail insurance season the board determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund to the farmers insured for the year, on a pro rata or percentage basis, the excess.

(3) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that such addition to the reserve will exceed 5% of the maximum risk written for that year.

(4) The reserve fund may not exceed \$4 million prior to January 1, 1976. On January 1, 1976, and thereafter the maximum permissible reserve fund shall be established as set forth in subsection (5) of this section.

(5) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(6) The reserve hereby created shall be deposited in the agency fund and the board is hereby granted the power to draw from its moneys in the fund such amounts as it considers necessary for the purpose of paying costs of administration, interest, and losses. Whenever there are no unpaid losses for prior years and whenever in any one year the cost of administration, interest, and losses for the current year are less than the sum of 60 cents per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current

year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board.

(7) The board of hail insurance may direct the board of investments to invest funds from the agency fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the board of hail insurance account in the agency fund.

History: En. Sec. 2, Ch. 34, L. 1919; re-en. Sec. 352, R. C. M. 1921; amd. Sec. 5, Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929; amd. Sec. 3, Ch. 200, L. 1953; amd. Sec. 1, Ch. 20, L. 1957; amd. Sec. 73, Ch. 147, L. 1963; amd. Sec. 3, Ch. 154, L. 1975; amd. Sec. 3, Ch. 16, L. 1977.

Amendments

The 1975 amendment redesignated subdivisions (1) 1 to 4 as subdivisions (1) (a) to (d); deleted "and provided further

that the reserve shall not exceed the amount of one million two hundred thousand dollars (\$1,200,000.00)" from the end of subsection (2); inserted subsections (3) and (4); and redesignated former subsection (3) as subsection (5).

The 1977 amendment redesignated subdivision (1)(d) as subsection (2); redesignated subsections (2) through (5) as subsections (3) through (6); added subsection (7); and made minor changes in phraseology, punctuation and style.

82-1512. (356) Duty of agent of the department of revenue—election of benefits of law. It shall be the duty of the agent of the department of revenue in each county in the state, at the time in which the annual assessment of property is made, to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail, the provisions of this act and the protection afforded thereby, and to request each such taxpayer to certify, on the forms provided for such purpose, if such taxpayer desires to become subject to this act and liable for the tax levies provided hereby, and thereby eligible to the benefits and protection of this act; and each such taxpayer who so elects to become subject to this act shall be liable for the taxes levied for hail insurance, and shall participate in the benefits and protection afforded by this act; provided, that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for, and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this act for hail insurance.

History: En. Sec. 5, Ch. 169, L. 1917; re-en. Sec. 356, R. C. M. 1921; amd. Sec. 60, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "the

agent of the department of revenue in each county" for "county assessor" near the beginning of the section in order to implement article VIII, section 3 of the 1972 constitution.

82-1515. (359) Appraisers — appointment — qualifications and duties. The state board of hail insurance shall, as soon as practicable, each year appoint a sufficient number of appraisers to appraise all losses by hail incurred under this act in the various counties. The men so appointed shall be actively engaged in farming or shall have had practical experience in farming and shall be selected from names submitted by regularly organized farmers societies in the various counties. If the recommendations

are not made as provided above, then the state board shall select the appraisers from men actively engaged in farming or men who have had practical experience in farming as heretofore provided. Provided, further, that the state board of hail insurance may call on one or more of the duly appointed appraisers for the adjustment of each and every loss and the said appraisers shall promptly report their findings to the state board of hail insurance, according to the rules provided by the said state board. Provided, further, that no appraiser who shall be a relative, attorney, agent, employee or creditor or in any manner interested by lien, mortgage or otherwise in the crop injured or destroyed, shall assist in adjusting any such loss. The state board may in case of emergency appoint more than three appraisers in any county. Also it may send any duly appointed appraiser or appraisers into any county as the occasion may require.

History: En. Sec. 8, Ch. 169, L. 1917; amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4, Ch. 141, L. 1921; re-en. Sec. 359, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1973.

Amendments

The 1973 amendment substituted "a sufficient number of appraisers" for "three men in each county" in the first sentence of this section.

82-1516. (360) Appointment of appraisers in case of dissatisfaction with official adjustment. (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within ten (10) days after receiving the adjustment offer of the state board in writing. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars (\$10) with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the ten dollar (\$10) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred within ninety (90) days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967.

Amendments

The 1967 amendment added "within ninety (90) days from the date of receipt of written notice of the second appraisal" at the end of the fifth sentence of subsection (1).

82-1517. (361) Payment of losses. (1) The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the loss in the following manner. From the amount of the loss as adjusted for each claimant, the board shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year and shall make settlement within 40 days from the time loss is sustained by paying, either by registered warrant or otherwise if funds are immediately available, 50% of the total loss as agreed upon, less the maximum rate of assessment. The balance shall be paid at the expiration of the hail season.

(2) The board shall on or before November 1 order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The board shall then order payment for the balance of the adjustment to be sent to the claimant, provided that in no case may the payment for loss exceed \$24 per acre for grain crops on nonirrigated lands, \$48 per acre on irrigated lands, and \$24 per acre on hay crops. No claimant may receive payment for any loss incurred where the loss does not equal or exceed 5% of the total value of the crop insured. If the losses in any year exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved, and the unpaid balance of the losses shall be paid out of the reserve without interest in such order as the board directs, when in the judgment of the board there are sufficient moneys to provide for the payment of the same and other items payable out of the reserve. In any year the board may by resolution authorize its chairman and secretary to borrow as needed from any person, bank, or corporation such sum or sums of money as the board may consider necessary for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this act, the board shall cause warrants to be drawn. The warrants shall bear interest at not to exceed 6% a year and the warrants and the interest thereon shall be paid out of funds from the state hail insurance program as they are collected from the various counties in the state. The board may not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer.

History: En. Sec. 10, Ch. 169, L. 1917; amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Ch. 141, L. 1921; re-en. Sec. 361, R. C. M. 1921; amd. Sec. 11, Ch. 40, L. 1923; amd. Sec. 2, Ch. 8, L. 1929; amd. Sec. 5, Ch. 33, L. 1949; amd. Sec. 4, Ch. 200, L. 1953; amd. Sec. 77, Ch. 147, L. 1963; amd. Sec. 4,

Ch. 154, L. 1975; amd. Sec. 33, Ch. 13, L. 1977.

Amendments

The 1975 amendment increased the maximum loss payments specified in subsection (2) from \$12 to \$24 per acre for

grain crops on nonirrigated lands; from \$24 to \$48 per acre for irrigated lands; and from \$12 to \$24 per acre for hay crops.

The 1977 amendment deleted "to carry on the business of the department and" after "necessary" near the end of the

last sentence of subsection (2); substituted "program" for "department" in the second sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

82-1519. (363) Compensation of chairman and officers—report. (1)

The appointed members of the state board of hail insurance shall receive a per diem of \$25 for each day they are engaged in the transaction of official business.

(2) All board members and employees shall be allowed expenses as provided in 59-538, 59-539, and 59-801.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R. C. M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967; amd. Sec. 38, Ch. 93, L. 1969; amd. Sec. 34, Ch. 13, L. 1977; amd. Sec. 13, Ch. 343, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 13 and once by Ch. 343. The code commissioner has directed that the section be set forth as amended by Ch. 13.

Amendments

The 1967 amendment substituted "in such amount * * * of hail insurance" for "not in excess of six hundred dollars (\$600) per month" in the second sentence, and added the last two sentences in the first paragraph.

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual financial reports in the second paragraph.

Chapter 13, Laws of 1977, rewrote the section which read: "It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a

salary in such amount as may be specified by the legislative assembly in the appropriation to the board of hail insurance and all appointed officers and employees under this act shall be allowed the per diem and mileage allowed state employees. The compensation of all appointed officers and employees of the board shall be fixed by the state board of hail insurance. If the legislative assembly does not specify the maximum salary for the head of the agency, the salary shall be fixed by the state board of hail insurance after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

"The chairman of the state board of hail insurance shall report as provided in section 2 of this act."

Chapter 343, Laws of 1977, inserted subsection designations; deleted the first two clauses of the second sentence in subsection (1); deleted the last three sentences of subsection (1); and made a minor change in style. For prior version, see amendment note for Chapter 13, Laws of 1977.

Repealing Clause

Section 35 of Ch. 13, Laws 1977 read "Sections 3-2601 through 3-2606, R. C. M. 1947, are repealed."

CHAPTER 17—LIEUTENANT GOVERNOR

Section

- 82-1702.1. Office of lieutenant governor created.
- 82-1702.2. Powers of lieutenant governor.
- 82-1702.3. Duties of lieutenant governor.
- 82-1703. Compensation—when acting as governor.

82-1701, 82-1702. (130, 131) Repealed.**Repeal**

Sections 82-1701, 82-1702 (Secs. 390, 391, Pol. C. 1895), relating to the duties and compensation of the lieutenant governor,

were repealed by Sec. 6, Ch. 297, Laws 1973. For new law, see secs. 82-1702.1 to 82-1702.3.

82-1702.1. Office of lieutenant governor created. There is created an office of lieutenant governor.

History: En. Sec. 1, Ch. 297, L. 1973.

Title of Act

An act to provide for the office of lieutenant governor implementing article VI, section 1(3) of the 1972 Montana consti-

tution; amending sections 25-501 and 82-1703, R. C. M. 1947; and repealing sections 82-1701, 82-1702 and 94-5418, R. C. M. 1947, which deal with the lieutenant governor as president of the senate.

82-1702.2. Powers of lieutenant governor. The lieutenant governor may:

- (1) prescribe rules for the administration of the office;
- (2) hire personnel for the office and establish policy to be followed by such personnel; and
- (3) compile and submit a budget for the office.

History: En. Sec. 2, Ch. 297, L. 1973.

82-1702.3. Duties of lieutenant governor. The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor.

History: En. Sec. 3, Ch. 297, L. 1973.

82-1703. (132) Compensation—when acting as governor. When the lieutenant governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time.

History: En. Sec. 392, Pol. C. 1895; re-en. Sec. 152, Rev. C. 1907; re-en. Sec. 132, R. C. M. 1921; amd. Sec. 5, Ch. 297, L. 1973.

tenant governor, to any other compensation or mileage" from the end of the section.

Amendments

The 1973 amendment deleted "but during such time he is not entitled, as lieu-

Repealing Clause

Section 6 of Ch. 297, Laws 1973 read "Sections 82-1701, 82-1702 and 94-5418, R. C. M. 1947, are repealed."

CHAPTER 18—MARSHAL OF SUPREME COURT

82-1804. (369) Accounts of marshal.**Compiler's Notes**

Section 99, Ch. 326, Laws 1974, substituted "department of administration"

in this section for "state board of examiners."

CHAPTER 19—STATE PURCHASES

Section

82-1901.1. Definition.

82-1902.1. General procurement duties of department of administration.

82-1903. Maintenance of warehouses.

82-1904. Authority to purchase.

- 82-1905. Payment for purchases by department.
- 82-1908. Department may require tests.
- 82-1910. [Transferred.]
- 82-1911. Property returns.
- 82-1914. **Sale of state property.**
- 82-1915.1. Data processing equipment, etc.
- 82-1916. Printing and publications.
- 82-1916.1. Supervision of public printing.
- 82-1917. Requisitions for supplies—manner of letting contracts.
- 82-1918. Contracts limited to three years—building laws.
- 82-1919. Purchase of fresh fruits and vegetables—emergency purchases.
- 82-1920. Impartiality to be shown in letting contracts—preference to residents.
- 82-1921. Record of bids—contracts.
- 82-1922. Contract transfers and collusion prohibited—violations and penalty.
- 82-1923. Inspection of property and warehouses of state.
- 82-1924. State contracts to be awarded to lowest responsible resident bidder.
- 82-1925. Residence defined—domestic corporations.
- 82-1925.1. State department of revenue to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—department's determination as prima facie evidence.
- 82-1926. Contract—Montana product preference provisions.
- 82-1927. Restriction on submitting additional bids when working beyond contract time.
- 82-1928. Excusable delays not considered working beyond contract time.
- 82-1929. Short title.
- 82-1930. Statement of purpose and policy.
- 82-1931. Definitions.
- 82-1932. Designation of small business set-asides.
- 82-1933. Insufficient bids—withdrawal of set-asides.
- 82-1934. Advertisement of successful bidder.
- 82-1935. Preference to Montana small business.
- 82-1936. Construction with other sections.
- 82-1937. Severability.
- 82-1938. Policy.
- 82-1939. Definition.
- 82-1940. Contracts negotiable without competitive bidding under certain circumstances.
- 82-1941. Definitions.
- 82-1942. Duties and powers.
- 82-1943. Procurement requirements.

82-1901. (284) Repealed.

Repeal

Section 82-1901 (Sec. 1, Ch. 197, L. 1921; Sec. 12, Ch. 194, L. 1951), relating

to creation of the state purchasing department and agent, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82-1901.1. Definition. Unless the context requires otherwise, in this chapter "department" means the department of administration provided for in Title 82A, chapter 2.

History: En. 82-1901.1 by Sec. 57, Ch. 326, L. 1974.

82-1902. (285) Repealed.

Repeal

Section 82-1902 (Sec. 2, Ch. 197, L. 1921; Sec. 1, Ch. 80, L. 1961; Sec. 58, Ch.

326, L. 1974), relating to duties of the department, was repealed by Sec. 9, Ch. 97, Laws 1977.

82-1902.1. General procurement duties of department of administration.

(1) The department shall make or supervise the making of all purchases of goods and services for the legislature, the supreme court, and each state agency, institution, and official.

(2) Unless otherwise provided by law, the legislature, the supreme court, or any state agency, institution, or official may not purchase goods or services unless the purchase is supervised by the department.

History: En. 82-1902.1 by Sec. 8, Ch. 1904.1, 82-1904.2, 82-1906, 82-1909, 82-1913, and 82-1915.

Title of Act

An act to generally revise and clarify the laws relating to public contracts; amending sections 82-1131, 82-1133, 82-1147, 82-1150, 82-1917, 82-1922, 82-1926, and 82-1932; R. C. M. 1947; and repealing sections 82-1104, 82-1139, 82-1902, 82-

Repealing Clause

Section 9 of Ch. 97, Laws 1977 read "Sections 82-1104, 82-1139, 82-1902, 82-1904.1, 82-1904.2, 82-1906, 82-1909, 82-1913, and 82-1915, R. C. M. 1947, are repealed."

82-1903. (286) Maintenance of warehouses. The department may maintain, rent, lease, or construct warehouses.

History: En. Sec. 3, Ch. 197, L. 1921; re-en. Sec. 286, R. C. M. 1921; amd. Sec. 2, Ch. 80, L. 1961; amd. Sec. 59, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state purchasing agent"; deleted a clause giving the former agent power to issue rules for the conduct of his business; and made minor changes in phraseology.

82-1904. (287) Authority to purchase. An estimate or requisition presented by an agency or state official in control of the appropriation or fund against which such contract or purchase is to be charged, must be approved by the department, and this shall be full authority for any contract and any purchase made by the department.

History: En. Sec. 4, Ch. 197, L. 1921; re-en. Sec. 287, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1925; amd. Sec. 1, Ch. 51, L. 1939; amd. Sec. 3, Ch. 80, L. 1961; amd. Sec. 60, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1904.1, 82-1904.2. Repealed.

Repeal

Sections 82-1904.1, 82-1904.2 (Secs. 1, 2, Ch. 150, L. 1961), relating to use of

coal in heating public buildings, were repealed by Sec. 9, Ch. 97, Laws 1977.

82-1905. (288) Payment for purchases by department. All valid claims on account of such contract and purchases negotiated by the department shall be audited and paid from the sums severally set aside for the use of the department by the contract and purchase estimate or requisition.

History: En. Sec. 5, Ch. 197, L. 1921; re-en. Sec. 288, R. C. M. 1921; amd. Sec. 4, Ch. 80, L. 1961; amd. Sec. 61, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent."

82-1906. (289) Repealed.

Repeal

Section 82-1906 (Sec. 6, Ch. 197, L. 1921; Sec. 5, Ch. 80, L. 1961; Sec. 62, Ch.

326, L. 1974), relating to contracts for printing and supplies, was repealed by Sec. 9, Ch. 97, Laws 1977.

82-1908. (291) Department may require tests. The department may require any agency or any of the educational institutions of the state to

perform any tests required by the department for information in determining the character and quality of the articles and commodities to be purchased and used by the state.

History: En. Sec. 8, Ch. 197, L. 1921; re-en. Sec. 291, R. C. M. 1921; amd. Sec. 63, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1909. (292) Repealed.

Repeal

Section 82-1909 (Sec. 9, Ch. 197, L. 1921; Sec. 1, Ch. 69, L. 1949; Sec. 6, Ch. 80, L. 1961; Sec. 64, Ch. 326, L. 1974),

relating to supplies for rooms used by the legislative assembly and its committees, was repealed by Sec. 9, Ch. 97, Laws 1977.

82-1910. [Transferred.]

Compiler's Notes

Section 65, Ch. 326, Laws of 1974 re-numbered this section as sec. 82-1916.1.

82-1911. (293.1) Property returns. All persons in charge of any state property, must, upon request of the department, furnish a sworn statement of all personal property in his possession or under his charge belonging to the state, together with an estimate of its value, and must furnish any other information in connection therewith, as the department requires.

History: En. Sec. 1, Ch. 66, L. 1923; amd. Sec. 66, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1913. (293.3) Repealed.

Repeal

Section 82-1913 (Sec. 3, Ch. 66, L. 1923; Sec. 67, Ch. 326, L. 1974), relating

to advertising for bids on supplies, was repealed by Sec. 9, Ch. 97, Laws 1977.

82-1914. (293.4) Sale of state property. (1) The department has exclusive power, subject to the approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of state government. However, if a state institution or agency needs and requests the materials, etc., to be disposed of, that institution or agency, upon the approval of the governor, may receive the materials, etc. requested.

(2) All sales of highway equipment shall be by public auction or sealed bids and all proceeds received by the department from the sale of all material, supplies, equipment and all other personal property of the department of highways shall be placed in the highway account of the earmarked revenue fund.

History: En. Sec. 4, Ch. 66, L. 1923; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974.

Amendments

The 1971 amendment added the second paragraph, providing that the proceeds from the sale of property of the state

highway commission be placed in its earmarked revenue fund.

The 1974 amendment substituted "department" for "state controller" in the first sentence of subsection (1) and in subsection (2); added the second sentence in subsection (1); substituted "department of highways" for "state highway

commission" in subsection (2); and made minor changes in phraseology and style.

Effective Date

Section 2 of Ch. 11, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

82-1915. (293.5) Repealed.

Repeal

Section 82-1915 (Sec. 5, Ch. 66, L. 1923; Sec. 69, Ch. 326, L. 1974), relating

to contracts for supplies of state agencies, was repealed by Sec. 9, Ch. 97, Laws 1977.

82-1915.1. Data processing equipment, etc. The department shall adopt rules governing the procurement and utilization of data processing equipment, programs and data processing communication networks, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The department shall supervise the procurement and location of this equipment, for all state agencies.

History: En. 82-1915.1 by Sec. 70, Ch. 326, L. 1974.

82-1916. (293.6) Printing and publications. (1) The department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office, elective or appointive, agency, or institution except the printing of the decisions of the supreme court as provided in section 82-2004. The department shall supervise and attend to all public printing of the state as provided in this chapter, and shall prevent duplication and unnecessary printing. All forms, blanks, and documents printed for distribution to the state agencies and institutions shall be serially numbered and indexed by the department and sample copies of each permanently retained; and the department shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(2) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

History: En. Sec. 6, Ch. 66, L. 1923; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969; amd. Sec. 71, Ch. 326, L. 1974.

Compiler's Notes

Section 82-2004, referred to in the first paragraph of this section, was repealed by Sec. 2, Ch. 305, Laws 1967. For present law dealing with the style and publication of supreme court reports, see sec. 82-2002.

Amendments

The 1967 amendment, in the subparagraph beginning "To the librarian," sub-

stituted "two (2) copies of each report" for "forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports"; and deleted the following two paragraphs which read, "The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to such libraries and other institutions outside this state with which the historical society of Montana may have established

exchange relations" and "The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study"; and added the last subparagraph.

The 1969 amendment deleted the final three paragraphs concerning the governor's certification of reports for publication and the printing and distribution of such reports.

The 1974 amendment substituted "department" for "state purchasing agent" throughout the section; substituted "this chapter" for "this act" in two places;

and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 44 of Ch. 93, Laws 1969 read "Sections 40-2712, 41-1607, 41-1608, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75-1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 82-3506, and 82-3708, R. C. M. 1947, are repealed."

Cross-References

Printing defined, sec. 19-103.1.

State publications distribution center, secs. 44-132 to 44-139.

82-1916.1. Supervision of public printing. The department may not approve a claim for printing submitted by a state officer, agency, or institution unless:

(1) A purchase order has been prepared and approved by the department prior to ordering the printing; or

(2) Written approval has been given by the department to order the printing without preparation of a purchase order.

History: En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1969; Sec. 82-1910, R. C. M. 1947; amd. and redes. 82-1916.1 by Sec. 65, Ch. 326, L. 1974.

Amendments

The 1969 amendment designated the first paragraph as subsection (1); added subsection (2); and made a minor change in phraseology.

The 1974 amendment renumbered this section; deleted a subsection (1) relating to the state purchasing agent's supervision of public printing; substituted "department" for "state controller" at the beginning of the section and for "state purchasing agent" in subdivision (2); and made minor changes in phraseology, punctuation and style. For prior version, see sec. 82-1910 in the parent volume.

82-1917. (293.7) Requisitions for supplies—manner of letting contracts. (1) State officers, agencies, and institutions shall tabulate in detail the amount of supplies on hand for any class of merchandise for a period as determined by the department and the additional supplies needed for a period of time not to exceed 1 year's supply. The department shall examine the amount of supplies on hand and shall determine from that examination and from the furnished statements the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of the department are subject to approval of the governor. As soon as the department determines what kind of supplies and the amount necessary for the state to purchase for its state offices, agencies, or institutions, the department shall make the purchases.

(2) All purchases by the department shall be based on competitive bids. On any purchase when the estimated expenditure is \$2,000 or over, sealed bids shall be solicited by mail from each person, firm, or corporation who has filed with the department a request in writing that it be listed for solicitation on bids for such particular items set forth in such listing. However, if a person, firm, or corporation whose name is listed fails to respond to any solicitation for bids after the receipt of two such solicitations, such listing shall, within the discretion of the department, be canceled. It

is within the discretion of the department to advertise for such purchases. If bids are solicited through advertising, the advertisement shall be made in at least three newspapers (one of which must be a daily) of general circulation printed within the state, once each week for 2 consecutive weeks, and the advertisement shall state that sealed proposals will be received by the department, up to a time to be mentioned therein, for furnishing supplies for the state offices, agencies, or institutions. The notice shall also state that detailed statements of supplies to be furnished are on file at the office of the department and subject to inspection and that at a certain time to be therein mentioned the proposals will be opened and contracts awarded to the lowest responsible bidder.

(3) On purchases where the estimated expenditure is less than \$2,000, bids shall be secured without advertising, but the department shall solicit bids for the supplies by notice sent by mail to prospective suppliers whose names are listed as provided above, which notice shall contain the same information as is herein required to be set forth in advertisements.

(4) In the case of all bids as herein provided, there shall be separate proposals and separate contracts. Each proposal may be accompanied by sample supplies proposed to be furnished. The proposals shall be in writing, sealed, and marked in accordance with the terms of the solicitation for bid and shall be addressed to the department of administration, Helena, Montana.

(5) At the time set for the opening of bids, the proposals shall be opened in public and contracts awarded to the lowest responsible bidder. The department may reject any bid. If all proposals be rejected, proposals shall again be invited and proceeded with in the same manner; however, in that event, the department may, with the approval of the governor, purchase the supplies on the open market if they can be so purchased at a better price.

(6) With any proposal the department may require a certified check on some responsible bank, payable to the treasurer of the state, equal in amount to 5% of the sum of the proposal, or a bid bond issued by a licensed surety company, as a guarantee for the faithful performance of any contract awarded. After the award is made, all checks deposited as a guarantee shall be returned, except that of the successful bidder whose check shall be held until the contract is signed and the performance bond is filed and approved, if a performance bond is required. All proposals shall include the delivery of the supplies in accordance with the terms of the solicitation for bid.

History: En. Sec. 7, Ch. 66, L. 1923; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971; amd. Sec. 72, Ch. 326, L. 1974; amd. Sec. 4, Ch. 97, L. 1977.

Amendments

The 1971 amendment reduced the number of solicitations required by the first proviso to the second sentence of the second paragraph from three to two; substituted "one of which must be a daily" in the last sentence of the second para-

graph for a requirement that all three be dailies; reduced the advertising requirement specified in the last sentence of the second paragraph from three to two weeks; deleted "the first publication to be not less than twenty-two (22) days before the date set for the opening of bids" after "consecutive weeks" in the last sentence of the second paragraph; substituted "may" for "shall" in the second sentence of the fourth paragraph; deleted "ample in quantity * * * intended delivery" from

the end of the second sentence of the fourth paragraph; and made minor changes in style.

The 1974 amendment substituted "department" or "department of administration" for "state purchasing agent" throughout the section; and made minor changes in phraseology, punctuation and style.

The 1977 amendment substituted "in accordance with the terms of the solicitation for bid" in the last sentence of subsection (4) for "proposals for furnishing supplies"; inserted "or a bid bond issued by a licensed surety com-

pany" in the first sentence of subsection (6); inserted "performance" before "bond" twice in the second sentence of subsection (6); substituted "in accordance with the terms of the solicitation for bid" at the end of subsection (6) for "the agencies and institutions for which they are purchased"; deleted a former subsection (7) reading "The state officers, agencies, or institutions, may not purchase any supplies or material, except on approval of the department"; and made minor changes in phraseology, punctuation and style.

82-1918. (293.8) Contracts limited to three years—building laws. (1)

No contract, except as otherwise provided by law, shall be made for a longer period than three (3) years and a contract shall provide for the delivery of the articles at the times and in the quantities as the department determines.

(2) All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana.

History: En. Sec. 8, Ch. 66, L. 1923; amd. Sec. 2, Ch. 301, L. 1971; amd. Sec. 1, Ch. 496, L. 1973; amd. Sec. 9, Ch. 242, L. 1974; amd. Sec. 73, Ch. 326, L. 1974.

Compiler's Notes

This section was amended twice in 1974, once by Ch. 242 and once by Ch. 326. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment increased the maximum contract period from one year to three years.

The 1973 amendment designated the language in the former section as subsection (1); inserted "except those provided in

subsection (2) of this section" in subsection (1); and added subsections (2) and (3).

Chapter 242, Laws of 1974, substituted "except as otherwise provided by law" for "except those provided for in subsection (2) of this section" in subsection (1); deleted subsection (2) added in 1973 authorizing the purchasing agent to enter into rental contracts with an option to purchase; and designated former subsection (3) as (2).

Chapter 326, Laws of 1974, substituted "department" for "purchasing agent" in subsection (1) and made minor changes in phraseology.

Effective Date

Section 10 of Ch. 242, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

82-1919. (293.9) Purchase of fresh fruits and vegetables—emergency purchases. (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals, but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of 82-1917 for the purchase of suitable clothing by the department of institutions for residents of juvenile correctional facilities.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

History: En. Sec. 9, Ch. 66, L. 1923; amd. Sec. 8, Ch. 80, L. 1961; amd. Sec. 74, Ch. 326, L. 1974; amd. Sec. 1, Ch. 230, L. 1977.

Amendments

The 1974 amendment substituted "de-

partment" for "state purchasing agent" throughout the section; and made minor changes in phraseology, punctuation and style.

The 1977 amendment added subsections (3) and (4).

82-1920. (293.10) Impartiality to be shown in letting contracts—preference to residents. The department may not show any partiality or favoritism in making awards or contracts, and shall be absolutely fair and impartial. Where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders of the state over nonresident bidders.

History: En. Sec. 10, Ch. 66, L. 1923; amd. Sec. 75, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent"; and made minor changes in phraseology.

82-1921. (293.11) Record of bids—contracts. The department shall record in a book kept for that purpose, a true abstract of all bids made for furnishing supplies and equipment for the state, giving the name of the party bidding, the terms of the offer, the sum to be paid, and shall keep on file and preserve all bids until the end of the contract term to which they relate. Each bidder has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids. All purchases, advertisements, and contracts for supplies for any purpose authorized by law shall be made by the department in the name of the state. The records shall be open at all times for the inspection of those who are interested in the contracts made or to be made with the state.

History: En. Sec. 11, Ch. 66, L. 1923; amd. Sec. 76, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "department" for "state purchasing agent" and made minor changes in phraseology.

82-1922. (293.12) Contract transfers and collusion prohibited—violations and penalty. (1) No contract or order or any interest therein may be transferred by the party to whom the contract or order is given to any other party, and the state may declare void any such transfer.

(2) Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited. The state may declare the contract void if the

department finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 59-501 or this section, or both, is guilty of a misdemeanor and shall be fined not less than \$500 or more than \$5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 59-501 or this section, or both, void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974; amd. Sec. 5, Ch. 97, L. 1977.

Amendments

The 1973 amendment deleted from the second paragraph clauses reading "No member of the legislature, nor any elective or appointive state officer, nor any deputy or employee thereof, nor superintendent of any state institution or any employee thereof, nor any person in the employ of the state of Montana in any capacity whatsoever, shall directly, himself, or by another person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Montana under the provisions of this act"; increased the minimum fine from \$100 to \$500; added to the end of the section the clause giving the state the option to void contracts in violation; and made minor changes in style.

The 1974 amendment substituted "the state may declare the contract void if the department finds sufficient evidence"

in the second sentence of subsection (2) for "the state purchasing agent and the state board of examiners shall have the right to declare any contract null and void if they shall find sufficient evidence"; and made minor changes in phraseology and style.

The 1977 amendment designated the former second sentence of subsection (1) as subsection (2); designated the first sentence of former subsection (2) as subsection (3); designated the last sentence of former subsection (2) as subsection (4); substituted "59-501 or this section, or both" in two places in subsection (4) for "this act"; and made minor changes in phraseology, punctuation and style.

Repealing Clause

Section 3 of Ch. 43, Laws 1973 read "Section 82-1144, R. C. M. 1947, is hereby repealed."

Effective Date

Section 4 of Ch. 43, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 10, 1973.

82-1923. (293.13) Inspection of property and warehouses of state. The warehouses, supplies, furnishings, and property of all kinds used in and about the business of the state is subject at all times to the inspection of the department and any officer or employee of any agency.

History: En. Sec. 13, Ch. 66, L. 1923; amd. Sec. 78, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment" for "state purchasing department"; and made minor changes in phraseology.

82-1924. State contracts to be awarded to lowest responsible resident bidder. In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair and public works of all kinds, it shall be the duty of each board, commission, officer or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district or a public corporation of the state of Montana, to award such contract to the

lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than three per cent (3%) higher than that of the lowest responsible bidder who is a nonresident of this state. In awarding contracts for purchase of products, materials, supplies or equipment such board, commission, officer or individual shall award the contract to any such resident whose offered materials, supplies or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than three per cent (3%) higher than that of the lowest responsible resident bidder whose offered materials, supplies or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance. This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969.

Amendments

The 1969 amendment substituted "three per cent (3%)" for "two per cent (2%)" before "higher" in the first sentence; inserted the second sentence; substituted "requires" for "required" before "advertisement for bids" in the present third sentence and added "and it shall apply to * * * adopted pursuant thereto" at the end.

Janitorial and Maintenance Services

Although this section provides 2% preference for resident bidders, it also establishes a general policy of requiring competitive bidding, including contracts for janitorial services for capitol complex, and such contracts must be let by competitive bidding. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

82-1925. Residence defined—domestic corporations. For the purpose of this act the word "resident" shall include actual residence of an individual within this state for a period of more than one (1) year immediately prior to bidding; in a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than one (1) year immediately prior to bidding; domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions of this act relating to residence. Notwithstanding the foregoing, any bidder on a contract for purchase of products, materials, supplies or equipment, whether an individual, partnership or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of this act.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974.

Amendments

The 1969 amendment, in the latter portion of the first sentence, deleted "(a)

composed of resident organizers or directors of this state who have no substantial interest or investment in the corporation for which they are acting and that the ownership and control of said company is vested in nonresidents"; deleted item designations (b) and (c); added the second

sentence; and made minor changes in style.

The 1974 amendment inserted "bidder on a contract for purchase of products, materials, supplies or equipment, whether an" before "individual" near the end of the section.

82-1925.1. State department of revenue to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—department's determination as prima facie evidence. It shall be the duty of the state department of revenue of the state of Montana, at the time that a public contractor makes application for a license under the provisions of chapter 35, Title 84 of this code, to determine whether or not such contractor is a "resident" of the state of Montana within the meaning of sections 82-1924 and 82-1925. The department shall endorse upon the contractor's license whether or not such contractor is a "resident" as aforesaid. If a contractor is not a "resident" at the time such license is issued, but thereafter qualifies as such, he may apply to the department of revenue for a redetermination of his residency, and, if found to qualify as a "resident," the department shall endorse such fact upon his license, together with the date of such qualification. It shall be the duty of the state department of revenue, upon written request of any board, commission, officer or individual charged by law with the responsibility for the execution of any contract subject to the provisions of section 82-1924 on behalf of the state, board, commission, political subdivision, agency, school district or public corporation of the state of Montana, to furnish a list of contractors who have qualified as "residents," as aforesaid, to such requesting body. The determination of the department of revenue that a public contractor is or is not a "resident" within the meaning of sections 82-1924 and 82-1925 shall be prima facie evidence of such fact.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973.

Title of Act

An act providing for the determination by the board of equalization of the state of Montana of whether a bidder on public contracts is a "resident" within the meaning of sections 82-1924 and 82-1925, Revised Codes of Montana, 1947.

Amendments

The 1973 amendment substituted "department" and "department of revenue" for "board" and "board of equalization" throughout the section.

Separability Clause

Section 2 of Ch. 217, Laws 1967 read "If any part of this act shall be held to be unconstitutional or invalid by a court of competent jurisdiction, it is the intent of the legislative assembly that all valid parts that are severable from the invalid part remain in effect."

Challenge of Issuance of Certificate

Resident contractor had standing to challenge, by original application for writ of mandate, validity of residency certificate issued by department of revenue to nonresident contractor; since resident was not party to nor given notice of administrative proceedings awarding certificate of residency, it had no administrative remedies to exhaust. *State ex rel. Sletten Constr. Co. v. City of Great Falls*, — M —, 516 P 2d 1149.

Insufficient Affidavit

Foreign corporation which stated that it would use Montana products and materials "insofar as they are available" and that it would use Montana labor "except for selected supervisory personnel" did not qualify for certification as resident contractor. *State ex rel. Sletten Constr. Co. v. City of Great Falls*, — M —, 516 P 2d 1149.

82-1926. Contract—Montana product preference provisions. (1) Each contract awarded by any political subdivision, school district, public corporation, or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies, and equipment procured if such products, materials, equipment, and supplies are comparable in price and quality.

(2) It is the intent of 82-1924, 82-1925, and 82-1926 that whenever possible, products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in price, quality, and performance shall be preferred for use in all projects and in all state institutions.

(3) Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation, or agency for a period of 2 years.

(4) The preference given to Montana products shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969; amd. Sec. 6, Ch. 97, L. 1977.

Amendments

The 1969 amendment rewrote the final paragraph which formerly provided that no preference should be given on contracts where federal aid had been obtained except as provided for by federal laws and

that section 82-1157 was not amended or repealed by the act enacting 82-1926.

The 1977 amendment inserted the subsection designations; inserted "procured" after "materials, supplies, and equipment" near the end of subsection (1); substituted "82-1924, 82-1925, and 82-1926" in subsection (2) for "this act"; and made minor changes in phraseology, punctuation and style.

82-1927. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in section 84-3501, R.C.M. 1947, who has been awarded a contract by the state of Montana, or any board, commission or department thereof, or by any board of county commissioners, or by any city or town council, or agency thereof, for the construction or reconstruction of a public work, and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals, nor enter into any additional contract with any public agency of the state of Montana, county, or city thereof, until he has completely executed the contract upon which he is working beyond contract time, and all supplemental agreements thereto.

History: En. Sec. 1, Ch. 141, L. 1967.

Title of Act

An act to provide that a public contractor who is working over the contract time on a previously awarded contract from the state of Montana, or any board, commission or department thereof, or from any

board of county commissioners, or from any city or town council, or agency thereof, may not submit any additional bids or proposals to any of the above-mentioned agencies until he has completely executed the present contract upon which he is working beyond contract time; amending section 84-3507, R. C. M. 1947.

82-1928. Excusable delays not considered working beyond contract time. A public contractor shall not be considered to be working beyond

contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "Act of God."

History: En. Sec. 2, Ch. 141, L. 1967.

82-1929. Short title. This act shall be known and may be cited as the "Montana Small Business Purchasing Act."

History: En. 82-1929 by Sec. 1, Ch. 204, L. 1974. Business Purchasing Act" authorizing state agencies to set aside specified commodities, equipment or services for bidding by small businesses.

Title of Act

An act known as the "Montana Small

82-1930. Statement of purpose and policy. It is the purpose of this act and is hereby declared to be the policy of this state that, whereas the existence of a strong and healthy free enterprise system is directly related to the well-being and competitive strength of small business concerns, and to the opportunity for small businesses to have free entry into business, to grow and to expand, the state shall ensure that a fair proportion of its total purchases and contracts for property and services be placed with small business concerns.

History: En. 82-1930 by Sec. 2, Ch. 204, L. 1974.

82-1931. Definitions. As used in this act, unless the context requires otherwise:

(1) "Department" means any department, division or agency of the state of Montana.

(2) "Small business" means a business which is independently owned and operated, and which is not dominant in its field of operation. The department of administration shall establish a detailed definition by rule, using in addition to the foregoing criteria, other criteria. Small business shall further mean all business domiciled in the state of Montana or one that employs more than fifty per cent (50%) of its total employed personnel within the boundaries of the state of Montana.

(3) "Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department.

History: En. 82-1931 by Sec. 3, Ch. 204, L. 1974.

82-1932. Designation of small business set-asides. (1) Each department has authority to designate as small business set-asides specified commodities, equipment, or services, except those services rendered and furnished by registered professions, such as but not limited to accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, and pharmacists, for which purchase has been requested under the Montana Small Business Purchasing Act. Such a designation shall be made prior to the advertisement for bids in a daily state newspaper, and

when the advertisement is published, it shall indicate the purchases which have been designated small business set-asides. To effectuate the purposes of 82-1929 through 82-1937, a department shall exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three small businesses capable of furnishing the desired property or service at a fair and reasonable price.

(2) In the case of purchase designated as small business set-asides, invitations to bid shall be confined to small businesses and bids from other businesses shall be rejected. The purchase, contract, or expenditure of funds shall be awarded to the lowest responsible bidder among the small businesses (considering conformity with specifications and terms) in accordance with the rules for purchasing published by the department.

History: En. 32-1932 by Sec. 4, Ch. 204, L. 1974; amd. Sec. 7, Ch. 97, L. 1977.

chase" for "purpose" near the beginning of the second sentence of subsection (2); deleted "and regulations" after "rules" near the end of subsection (2); and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment inserted the subsection designations; substituted "pur-

82-1933. Insufficient bids—withdrawal of set-asides. If the total number of small businesses responding to the invitation to bid and considered capable of meeting the specifications and terms of the invitation to bid is less than three (3), or if a department determines that acceptance of the best bid will result in the payment of an unreasonable price, the department shall reject all bids and withdraw the designation of small business set-aside.

If a department withdraws the designation of small business set-aside it shall notify the bidders of the reason why the bids were rejected. Invitations to bid containing the same or rewritten specifications and terms shall then be re-issued under the Montana Small Business Purchasing Act, without the designation of small business set-aside.

History: En. 82-1933 by Sec. 5, Ch. 204, L. 1974.

82-1934. Advertisement of successful bidder. After the successful bidder has been determined, the department shall place an advertisement in a daily newspaper indicating that all bids submitted on a small business set-aside have been opened and reporting the name and address of the successful bidder. A department shall send a purchase order to the successful bidder no later than fourteen (14) days after the appearance of the advertisement announcing the successful bidder.

History: En. 82-1934 by Sec. 6, Ch. 204, L. 1974.

82-1935. Preference to Montana small business. When the best bid is made by a domestic Montana small business and it is the same as another bid, preference shall be given to such Montana concern.

History: En. 82-1935 by Sec. 7, Ch. 204, L. 1974.

82-1936. Construction with other sections. Procurement from small businesses under this act is subject to all other statutes governing state

procurement and all rules promulgated thereunder, as now or hereafter amended, except that in case of conflict this act governs and the provisions set forth in 82-1924, 82-1926 and 82-1920, shall not apply.

History: En. 82-1936 by Sec. 8, Ch. 204,
L. 1974.

82-1937. Severability. If any section in this act or any part of any section is declared invalid or unconstitutional such declaration of invalidity shall not affect the validity of the remaining portions thereof.

History: En. 82-1937 by Sec. 9, Ch. 204,
L. 1974.

82-1938. Policy. It is the policy of the state of Montana to encourage state agencies to negotiate contracts with sheltered workshops and work activity centers principally engaged in rehabilitation programs that are located in Montana.

History: En. 82-1938 by Sec. 1, Ch. 123, contract with rehabilitation oriented
L. 1974. agencies without competitive bidding in
certain instances.

Title of Act

An act permitting state agencies to

82-1939. Definition. For the purpose of this act, a "sheltered workshop" and a "work activity center" mean a workshop having a sheltered workshop certificate, or an evaluation and training certificate, or a work activities center certificate issued by the wage and hour division of the United States department of labor, or recognized by the department of social and rehabilitation services in Montana.

History: En. 82-1939 by Sec. 2, Ch. 123,
L. 1974.

82-1940. Contracts negotiable without competitive bidding under certain circumstances. State agencies may negotiate contracts for the purchase of products not exceeding five thousand dollars (\$5,000) from sheltered workshops and work activity centers located in Montana without complying with the provisions of Title 82, chapter 19, concerning competitive bidding.

History: En. 82-1940 by Sec. 3, Ch. 123,
L. 1974.

82-1941. Definitions. As used in 82-1941 through 82-1943, the following definitions apply:

(1) "Certified sheltered workshop" or "work activity center" means a nonprofit corporation incorporated under the laws of the state for the purpose of providing vocational services to disabled vocationally handicapped individuals, in whole or in part, which:

(a) holds a current certificate issued by the United States department of labor for either one or all of the following:

- (i) evaluation or training;
- (ii) a regular work program; or
- (iii) work activity center;

(b) complies with other applicable occupational, health, and safety standards of local, state, and federal governments governing the operation of such facility not otherwise included in 82-1941 through 82-1943;

(c) in the manufacture of products and in the provision of service, whether or not the product or service is procured under this act, employs and trains vocationally handicapped individuals for not less than 75% of the man-hours of direct labor required for the manufacture of products or the provision of service; and

(d) is hereinafter referred to as a "facility".

(2) "Department" means the department of administration.

(3) "Vocationally handicapped" means an individual under a physical, mental, or emotional disability which constitutes a substantial handicap to employment and prevents the individual under the disability from engaging in normal competitive employment.

History: En. 82-1941 by Sec. 1, Ch. 547,
L. 1977.

Title of Act

An act to require state departments, institutions and agencies to procure products and services from sheltered workshops and work activity centers.

82-1942. Duties and powers. (1) The department shall establish and publish a listing of the products and services purchased by the state. From this list, facilities may select products or services to be produced or provided by one or more facilities. A product or service shall be removed from the list approved for facilities whenever the department ascertains that the product or service exceeds 20% of the gross sales of any business in Montana producing that product or providing that service.

(2) The department may contract with a nonprofit organization to:

(a) certify facilities;

(b) provide technical assistance to facilities on matters of product or service capabilities;

(c) facilitate distribution of orders among facilities and to insure equal opportunity in obtaining orders.

(3) The department shall determine the fair market price to be charged for products and services on the procurement list which is competitive with readily available alternative sources. In determining and revising the prices of products and services, the department must give consideration to reasonable costs of labor, materials, and overhead and a percentage of gross sales to fund the activities of the nonprofit organization specified in (2)(a), (2)(b), and (2)(c) above.

(4) The department shall adopt, revise, and amend rules to implement 82-1941 through 82-1943 in accordance with the procedures of the Montana Administrative Procedure Act.

History: En. 82-1942 by Sec. 2, Ch. 547,
L. 1977.

82-1943. Procurement requirements. State departments, institutions and agencies shall, after promulgation of the product and service list,

procure listed products and services from a facility. The provisions of Title 82, chapter 19, relating to competitive bidding do not apply to purchases made in accordance with 82-1941 through 82-1943.

History: En. 82-1943 by Sec. 3, Ch. 547, L. 1977.

CHAPTER 20—REPORTERS OF DECISIONS OF SUPREME COURT— PUBLICATION AND DISTRIBUTION OF REPORTS

Section

82-2002. Duties of reporters.

82-2007. Distribution of reports.

82-2002. (379) Duties of reporters. The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of the cases shall be made under the supervision of, and pursuant to rules adopted by the justices of the supreme court. Reports of all cases shall be furnished to the West Publishing Company for inclusion in their publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication. The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices, and the department of administration shall prepare and issue a call for bids and in accordance with the terms and specifications of the call, contract with the lowest and best bidder.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967; amd. Sec. 79, Ch. 326, L. 1974.

Amendments

The 1967 amendment added the last two sentences.

The 1974 amendment substituted "department of administration" for "board of examiners" and "board" in the fourth and fifth sentences; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 305, Laws 1967 read "Sections 82-2003, 82-2004, 82-2005 and 82-2006, Revised Codes of Montana, 1947, are hereby repealed."

82-2003 to 82-2006. (380 to 383) Repealed.

Repeal

These sections (Secs. 892 to 895, Pol. C. 1895; Secs. 1 to 3, Ch. 1, L. 1925; Sec. 1, Ch. 111, L. 1943; Sec. 1, Ch. 139, L. 1947;

Sec. 2, Ch. 14, L. 1961), relating to the style and title of supreme court reports, were repealed by Sec. 2, Ch. 305, Laws 1967.

82-2007. (384) Distribution of reports. (1) On the publication of each volume of the reports, the secretary of state shall purchase 300 copies from the publisher for the use of the state. He shall distribute them in the following manner:

(a) to the law libraries of each state and territory of the United States, one copy;

(b) to the library of congress, five copies;

(c) to each of the judges of the United States district courts of the states of Idaho, Nevada, California, Washington, Montana, Wyoming, and Oregon, one copy;

(d) to each justice of the supreme court, district judge, county attorney, and clerk of a district court in this state, one copy;

(e) to each state office, as many copies as the secretary of state determines are needed;

(f) to the law library of the state of Montana, three copies.

(2) He shall also distribute the reports to literary and scientific institutions, publishers, authors, and legislative reference libraries of other states with which the state law librarian has established a system of exchange.

(3) He shall also distribute to the university of Montana up to 50 copies to be used by the law librarian of the university for the purpose of exchanges with universities and institutions of higher education in other states.

(4) All reports distributed to state, district, and other officers in the state are for the use of their office and shall be, by the person receiving them, turned over to his successor in office. The secretary of state shall take proper receipts for the reports.

History: En. Sec. 896, Pol. C. 1895; re-en. Sec. 312, Rev. C. 1907; amd. Sec. 1, Ch. 203, L. 1921; re-en. Sec. 384, R. C. M. 1921; amd. Sec. 3, Ch. 46, L. 1937; amd. Sec. 20, Ch. 344, L. 1977.

Amendments

The 1977 amendment divided the section into subsections and subdivisions; deleted "state officer" after "to each" in subdivision (1)(d); inserted subdivision (1)(e); and made minor changes in phraseology, punctuation and style.

CHAPTER 22—SECRETARY OF STATE

Section

82-2202. Duties of secretary of state.

82-2203. [Transferred.]

82-2208. Exceptions to application of law.

82-2210 to 82-2212. [Transferred.]

82-2202. (134) Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1 to 8. * * * [Same as parent volume.]

9. To notify in writing, the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

10. To present to the legislative assembly, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights and stationery.

11. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

12. To file in his office descriptions of seals in use by the different state officers, and furnish such officers with new seals whenever required.

13. To discharge the duties of member of the state board of examiners, of member of the state board of prison commissioners, of member of the state board of land commissioners and all other duties required of him by law.

14. To report to the governor, at the time prescribed in section 59-702 a detailed account of all official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended; and to report as provided in section 59-705.

15. To receive, designate, and record trade-marks as provided in section 85-102.

16. He must distribute the bound volumes of the decisions of the supreme court, in the manner provided by section 82-2007.

17. To report annually to the legislative services division of the legislative council all changes of names received pursuant to section 93-100-5, for publication in the session laws.

18. To report annually to the legislative services division of the legislative council all watercourse name changes received pursuant to section 93-100-9 for publication in the session laws.

History: En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 134, R. C. M. 1921; amd. Sec. 95, Ch. 199, L. 1965; amd. Sec. 1, Ch. 96, L. 1973. Cal. Pol. C. Sec. 408.

Amendments

The 1973 amendment deleted former subdivision 9 relating to delivery to the printer of laws; resolutions and legislative journals; redesignated former subdivisions 10 to 17, inclusive, as subdivisions 9 to 16; and added new subdivisions 17 and 18.

82-2203. [Transferred.]

Compiler's Notes

Section 82-2203 was redesignated as section 43-711.2 by Sec. 4, Ch. 96, Laws 1973.

82-2204. (136) Repealed.

Repeal

Section 82-2204 (Sec. 403, Pol. C. 1895), relating to books distributed by the sec-

retary of state, was repealed by Sec. 2, Ch. 59, Laws 1973; Sec. 8, Ch. 96, Laws 1973.

82-2208. (140) Exceptions to application of law. The provisions of this act shall not apply to the decisions of the supreme court, the contributions of the historical society, session laws or house and senate journals, nor to bills printed for the legislative assembly, or other printing for its use during its session, not appropriate to be put in pamphlet form.

History: En. Sec. 408, Pol. C. 1895; re-en. Sec. 161, Rev. C. 1907; re-en. Sec. 140, R. C. M. 1921; amd. Sec. 2, Ch. 96, L. 1973.

Amendments

The 1973 amendment inserted "session laws or house and senate journals."

82-2210 to 82-2212. [Transferred.]

Compiler's Notes

Sections 82-2210 to 82-2212 were redesignated as sections 43-711.3 to 43-711.5 by

Secs. 5 to 7, Ch. 96, Laws 1973.

CHAPTER 23—STOCK COMMISSION AND STATE VETERINARY SURGEON

82-2301. (231) Repealed.**Repeal**

Section 82-2301 (Sec. 218, Rev. C. 1907), relating to powers and duties of the livestock commission, livestock sanitary board

and state veterinary surgeon, was repealed by Sec. 201, Ch. 310, Laws of 1974.

CHAPTER 27—CO-ORDINATOR OF INDIAN AFFAIRS

Section

82-2701. Legislative policy.

82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—office.

82-2703. Duties of co-ordinator.

82-2705. Executive and legislative agencies to assist in coal development.

82-2701. Legislative policy. Whereas, a considerable portion of the citizens of the state of Montana are members of the Indian race, and,

Whereas, in the course of the past eighty years these Indian citizens of the state of Montana have been driven from their native valleys and plains and are at present living and residing upon reservations set apart for such purposes by the United States of America, and by virtue of that isolation and of supervision by the federal government, great problems of economic and social significance have arisen and presently exist, and that no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a co-ordinated and united effort in solving such problems, and

Whereas, it is hereby declared that it is the legislative policy of this state that the best interests of the Indians will be served by the fostering of a program which is designed to establish and place our Indian citizens in a position to take their rightful place in our society, and assume the rights, duties and privileges of full citizenship and as Indians, it is therefore necessary that a state office of the co-ordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in co-operation with the United States of America, and

Whereas, agencies of the federal government retain jurisdiction on Indian reservations in the state of Montana of the administration of economic, social, health, education and welfare programs for Indians, and

Whereas, Indians who reside off reservations generally qualify for participation in federal programs, but are often prohibited from voting on tribal affairs and for tribal officers, and

Whereas, there are sizeable numbers of off-reservation Indians residing in our state of both enrolled and unofficial tribal descent (landless) whose needs for environmental assistance are borne by state and local agencies, and that these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their desire for official voice and representation in seeking solutions to their problems, and

Whereas, programs of the state of Montana should not duplicate those supported by agencies of the federal government as regards jurisdiction of Indian people, and since state responsibility is effected with off-reservation Indians, and since those Indians require assistance to co-ordinate their affairs with various tribal groups and federal agencies where they have no official recognition,

Then therefore, let it be resolved that the co-ordinator of Indian affairs should assess the problems of all Indians to include those who reside off known reservations, and who seek ways and means of communicating their opinions and needs to agencies of responsibility, and that the co-ordinator should actively assist them in organizing their efforts and that he act as representative and spokesman for organized bodies of Indian people whether reservation or off-reservation classification, whenever his assistance is required.

History: En. Sec. 1, Ch. 203, L. 1951; amd. Sec. 1, Ch. 319, L. 1969; amd. Sec. 1, Ch. 160, L. 1974.

Amendments

The 1969 amendment made a minor style

change at the end of the third paragraph and added the last five paragraphs.

The 1974 amendment inserted "and as Indians" after "privileges of full citizenship" in the third paragraph; and made minor changes in phraseology.

82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—office. The office of the state co-ordinator of Indian affairs is hereby created. The co-ordinator shall be appointed by the governor from a list of five (5) qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state and shall serve at the pleasure of the governor.

History: En. Sec. 2, Ch. 203, L. 1951; amd. Sec. 12, Ch. 237, L. 1967; amd. Sec. 2, Ch. 319, L. 1969; amd. Sec. 2, Ch. 160, L. 1974.

Amendments

The 1967 amendment substituted "salary in such amount * * * and private industry" for "salary of one dollar (\$1.00) per year."

The 1969 amendment deleted a former fifth sentence, which read "Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry."

The 1974 amendment substituted "In-

dian applicants" for "persons" in the second sentence; substituted "and shall serve at the pleasure of the governor" for "He shall hold such office for a term of four (4) years and shall be paid a salary in such amount as may be specified by the legislative assembly in the appropriation to the co-ordinator of Indian affairs. If the legislative assembly does not specify the maximum salary for the co-ordinator, any increase in the salary of the co-ordinator must be approved by the board of examiners. He shall maintain his office at the state capitol in Helena, Montana"; and made minor changes in phraseology.

82-2703. Duties of co-ordinator. It shall be the duty of the state co-ordinator of Indian affairs to carry out the legislative policy set forth in section 82-2701.

He shall acquaint himself with the problems confronting the Indians of Montana and he shall advise the legislative and executive branches of the state of Montana of those problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana delegation in the federal Congress as an adviser and intermediary in the field of Indian affairs, and shall act as spokesman for representative Indian organizations and groups, public and private, whenever his support is solicited.

History: En. Sec. 3, Ch. 203, L. 1951; amd. Sec. 3, Ch. 319, L. 1969; amd. Sec. 3, Ch. 160, L. 1974.

Amendments

The 1969 amendment, in the second sentence of the first paragraph, inserted "educational funds, economic, health, and housing funds" after "rehabilitation loans" and substituted "various federal programs established for these purposes" for "Indian loan associations to be established on the various reservations" at the end of the third sentence; in the second paragraph, substituted "and sanitation * * * whenever necessary" for "on Indian reservations and in general to promote the welfare of our Indian citizens, and in doing these things he will co-ordinate"; and in the third paragraph, added "and shall act * * * whenever such support is solicited."

The 1974 amendment deleted from the end of the first paragraph two sentences which read "He shall solicit rehabilitation loans, educational funds, economic, health, and housing funds from various sources for the purpose of enabling deserving Indians to become self-sufficient. Interest rates on such loans shall not exceed four per cent (4%) and such loans shall be disbursed through various federal programs established for these purposes"; deleted a second paragraph which read "He shall also do everything possible to bring about adequate housing and sanitation for Indians, whether they reside on reservations or not, and will co-ordinate such activities whenever necessary with the department of Indian affairs of the United States, the United States government and the state of Montana"; and made minor changes in phraseology.

82-2704. Repealed.

Repeal

Section 82-2704 (Sec. 4, Ch. 203, L. 1951), relating to reports by the state co-

ordinator of Indian affairs, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-2705. Executive and legislative agencies to assist in coal development. All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting such assistance on any matter relating to coal development on Indian reservation lands, and may make an appropriate charge therefor.

History: En. Sec. 1, Ch. 221, L. 1973.

Title of Act

An act allowing all agencies of state government to give assistance to tribal

councils or their official designees assistance on any matter relating to coal development on Indian lands, and providing for recovery of costs thereof.

CHAPTER 29—AGRICULTURE AND LIVESTOCK COUNCIL

(Repealed—Section 173, Chapter 218, Laws of 1974)

82-2901 to 82-2903. Repealed.

Repeal

Sections 82-2901 to 82-2903 (Secs. 1 to 3, Ch. 87, L. 1953), relating to the agri-

culture and livestock council, were repealed by Sec. 173, Ch. 218, Laws of 1974.

CHAPTER 30—NATURAL RESOURCES AND DEVELOPMENT COUNCIL

(Repealed—Section 108, Chapter 253, Laws of 1974)

82-3001 to 82-3003. Repealed.

Repeal

Sections 82-3001 to 82-3003 (Secs. 1 to 3, Ch. 95, L. 1953; Sec. 4, Ch. 280, L. 1965; Sec. 1, Ch. 230, L. 1967; Secs.

1 to 3, Ch. 269, L. 1969; Sec. 1, Ch. 85, L. 1971), relating to the interdepartmental advisory council, were repealed by Sec. 108, Ch. 253, Laws of 1974.

CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY

Section

- 82-3101. Administration of the state agency for surplus property.
 82-3102. Authority and duties of the state agency for surplus property.
 82-3104. Agency for surplus property—authorization for financing.
 82-3105. Department director—delegating powers and duties.
 82-3106. Officers or employees authorized to secure transfer of surplus property.

82-3101. Administration of the state agency for surplus property. There is hereby created and established a Montana state agency for surplus property, which shall be administered by the department of administration. The director of the department may prescribe the duties of such personnel as are needed to carry out the duties as hereinafter stated.

History: En. Sec. 1, Ch. 136, L. 1953;
 amd. Sec. 1, Ch. 478, L. 1977.

Amendments

The 1977 amendment substituted "department of administration" in the first sentence for "state board of education"; deleted "and which shall be subject to the supervision and direction of the state

superintendent of public instruction" at the end of the first sentence; substituted "director of the department" at the beginning of the second sentence for "state superintendent of public instruction"; deleted "appoint, fix the compensation of, and" before "prescribe" in the last sentence; and made a minor change in phraseology.

82-3102. Authority and duties of the state agency for surplus property.
 (a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act," such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes authorized by the act; (2) to warehouse such property; and (3) to distribute such property within the state to eligible participants.

(b) The state agency for surplus property is hereby authorized to receive applications from eligible participants for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act as amended.

(c) For the purpose of executing its authority under this act, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other action as is deemed necessary and suitable, in the administration of this act, to assure maximum utilization by and benefit to participants within the state from property distributed under this act.

(d) * * * [Same as parent volume.]

(e) The state agency for surplus property is authorized and empowered to act as clearinghouse of information for eligible participants to locate

both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from eligible participants and to transmit to them all available information in reference to such property, and to aid and assist eligible participants in every way possible in the consummation of acquisitions or transactions hereunder.

(f) * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957; amd. Sec. 2, Ch. 478, L. 1977.

Amendments

The 1977 amendment deleted "of education, public health or civil defense, including research for any such purpose, and for such other purposes as may now

or hereafter be" after "necessary for purposes" near the end of subdivision (a) (1); substituted references to participants for references to public and nonprofit institutions, organizations and agencies throughout the section; and made minor changes in phraseology. For prior version, see parent volume.

82-3104. Agency for surplus property—authorization for financing.

The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property which shall be deposited in the treasury in the revolving fund.

History: En. Sec. 4, Ch. 136, L. 1953; amd. Sec. 66, Ch. 147, L. 1963; amd. Sec. 1, Ch. 389, L. 1977; amd. Sec. 3, Ch. 478, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 389 and once by Ch. 478. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 389, Laws of 1977, substituted "revolving fund" at the end of the first sentence for "federal and private grant clearance fund"; and made a minor change in phraseology.

Chapter 478, Laws of 1977, substituted "revolving fund" at the end of the first sentence for "federal and private grant clearance fund"; and deleted the last two sentences. For prior version, see parent volume.

82-3105. Department director—delegating powers and duties. The director of the department may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this act.

History: En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957; amd. Sec. 49, Ch. 177, L. 1965; amd. Sec. 4, Ch. 478, L. 1977.

Amendments

The 1977 amendment substituted "di-

rector of the department" for "state superintendent of public instruction."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

82-3106. Officers or employees authorized to secure transfer of surplus property. Any provision of law to the contrary notwithstanding, the governing board, or in case there be none, the executive head, of any state department, instrumentality, or agency or of any city, county, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this act through the department of administration under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended,

and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by the department.

History: En. as addition to Ch. 31, Amendments

Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957; amd. Sec. 5, Ch. 478, L. 1977.

The 1977 amendment substituted references to the department of administration for references to the state department of public instruction, donable property division in two places.

CHAPTER 32—STATE RECORDS

Section

82-3207. Declaration of public policy as to preservation of state records.

82-3208. State archives created—appointment of archivist—duties and compensation.

82-3209. Archivist to preserve noncurrent records of permanent value.

82-3205, 82-3206. Repealed.

Repeal

Sections 82-3205, 82-3206 (Secs. 5, 6, Ch. 189, L. 1953; Sec. 31, Ch. 271, L. 1963),

relating to the microfilm division and the powers of the librarian, were repealed by Sec. 13, Ch. 3, Laws 1977.

82-3207. Declaration of public policy as to preservation of state records.

The legislative assembly declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state affairs, the state should preserve its noncurrent records of permanent value for study and research.

History: En. Sec. 1, Ch. 108, L. 1969.

Title of Act

An act creating a state archives in the Montana historical society; providing for

appointment of a state archivist to preserve noncurrent records of permanent value to the state and to assist state officers and agencies in records management.

82-3208. State archives created—appointment of archivist—duties and compensation. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and for records management. The director of the Montana historical society shall appoint a state archivist who serves at the pleasure of the director, define his duties, and fix his compensation with the approval of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 108, L. 1969.

82-3209. Archivist to preserve noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value. Upon request, he shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches.

of state government with due regard to the functions of the officers and agencies involved.

History: En. Sec. 3, Ch. 108, L. 1969;
amd. Sec. 1, Ch. 41, L. 1973.

Amendments

The 1973 amendment deleted "and shall

establish and administer an active, continuing program for the economical and efficient management of state records" from the end of the first sentence.

CHAPTER 33—DEPARTMENT OF ADMINISTRATION—SUPERVISION OF FACILITIES—BUILDING PROGRAM—COMMUNICATIONS

Section

- 82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities.
- 82-3310.1. Fire protection for state-owned buildings.
- 82-3310.2. Review of fire protection services by fire marshal.
- 82-3314. Definitions of building and construction.
- 82-3315. Preparation of building programs and submittal to the legislative assembly.
- 82-3315.1. Authority to enter into rental contract with option to purchase.
- 82-3315.2. Location of building.
- 82-3315.3. Security pledge.
- 82-3315.4. Appointment of architect.
- 82-3315.5. Contract provisions.
- 82-3315.6. Rent payments.
- 82-3315.7. Awarding contract.
- 82-3315.8. Compliance with state laws and regulations.
- 82-3316. Authority to construct buildings.
- 82-3317. Supervision of construction of buildings.
- 82-3318. General powers and duties of department of administration.
- 82-3319. Appointment of architects and consulting engineers.
- 82-3320. Policy regarding practice of architecture—preparation of working drawings by department limited.
- 82-3321. Pecuniary interest in construction of buildings prohibited.
- 82-3325. Powers and duties of department of administration regarding communications.
- 82-3325.1. Transfer of funds, equipment, facilities, and employees.
- 82-3325.2. Rights and privileges of employees transferred to department.
- 82-3329. Bases of director's decisions.
- 82-3330. Co-operation with other government agencies not limited.
- 82-3331. Exemption of law enforcement communications system—exception.
- 82-3332. Short title.
- 82-3333. Purpose.
- 82-3334. Description and preservation of public records.
- 82-3335. Department of administration—powers and duties—records management.
- 82-3336. Agency responsibilities—transfer schedules.
- 82-3337. Legislative and judicial branches.
- 82-3338. Records committee—composition—meetings—powers and duties.
- 82-3339. Disposal of public records.
- 82-3340. Transfer of public records.
- 82-3341. Protection of essential records.

82-3301 to 82-3305. Repealed.

Repeal

Sections 82-3301 to 82-3305 (Secs. 1 to 5, Ch. 271, L. 1963; Sec. 2, Ch. 101, L. 1969; Sec. 1, Ch. 313, L. 1971), relating

to the department of administration, the controller, and divisions of the department, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities. (1) The department of administration shall maintain and supervise any central mailing, messenger service, data processing, duplicating, and copying facilities for state agencies in the cap-

itol area. Cost records shall be maintained and agencies shall be billed for services received.

History: En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967; amd. Sec. 3, Ch. 101, L. 1969; amd. Sec. 2, Ch. 313, L. 1971; amd. Sec. 80, Ch. 326, L. 1974.

Amendments

The 1967 amendment numbered the original paragraph of the section "(1)"; and added subsection (2).

The 1969 amendment deleted "the budget director" after "committee consisting of" and substituted "two" for "three" after "members appointed by the other" in the second sentence of subsection (2).

The 1971 amendment inserted "data processing, duplicating and copying" in the first sentence of subsection (1); added the second sentence to subsection (1); inserted "and utilization" and "programs and data processing communication networks" in the first sentence of subsection (2); and deleted "other than the department of public instruction" from the end of the last sentence of subsection (2).

The 1974 amendment substituted "department of administration" in the first

sentence for "controller"; inserted "messenger service" in the first sentence; and deleted a second subsection which read: "(2) The controller shall establish regulations governing the procurement and utilization of data processing equipment, programs and data processing communication networks, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The regulations of the state controller shall be formulated with the advice of a committee consisting of a representative of the board of regents, a representative of the state highway commission, and two (2) members appointed by the other two, and one (1) of the appointed members shall have special knowledge or experience with data processing equipment and one (1) shall have special knowledge or experience with the other named office equipment. Within these regulations the controller shall supervise the procurement and location of the herein named equipment for all state agencies."

82-3307. Supervision of central telephone switchboard.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in

this section for "state controller" and "controller."

82-3308. Surveys and allocation of office space.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in this section for "state controller" and "controller."

Chapter 479, Laws of 1975, approved April 18, 1975, provides that on the completion of the new highways complex the department of administration is to assign space in the present highways building according to priorities set forth in the act.

82-3309. Custodial care of capitol buildings and grounds.

Compiler's Notes

Section 98, Ch. 326, Laws 1974, substituted "department of administration" in this section for "state controller" and "controller."

Competitive Bidding

Contract to provide janitorial services, maintenance service and supplies for capitol complex required competitive bidding. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

82-3310.1. Fire protection for state-owned buildings. The department of administration shall obtain information necessary to prepare a budget for the next session of the legislature for fire protection services for state-owned buildings that present particular firefighting problems as determined by the state fire marshal. In preparing the budget the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services

provided to state agencies, all of which are subject to appropriation by the legislature.

History: En. 82-3310.1 by Sec. 1, Ch. 481, L. 1977.

Title of Act

An act to prepare for providing fire protection services for certain state-owned buildings and authorizing payments for such protection.

82-3310.2. Review of fire protection services by fire marshal. The state fire marshal shall review provisions for protection of state-owned buildings in connection with inspections conducted under 82-1202.

History: En. 82-3310.2 by Sec. 2, Ch. 481, L. 1977.

82-3311 to 82-3313. Repealed.

Repeal

Sections 82-3311 to 82-3313 (Secs. 11 to 13, Ch. 271, L. 1963), relating to state

records management program, were repealed by Sec. 11, Ch. 339, Laws 1977.

82-3314. Definitions of building and construction. In sections 82-3315 to 82-3321, with the exception of 82-3317(2),

(1) "Building" includes:

(a) A building, facility, or structure constructed or purchased wholly or in part with state moneys.

(b) A building, facility, or structure at a state institution.

(c) A building, facility, or structure owned or to be owned by a state agency, including the department of highways.

(2) "Building" does not include:

(a) A building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district.

(b) A facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974.

exception of 82-3317 (2)," to the preliminary clause.

The 1974 amendment substituted "department of highways" in subdivision (1) (c) for "state highway commission"; and made minor changes in punctuation.

Amendments

The 1973 amendment added "with the

82-3315. Preparation of building programs and submittal to the legislative assembly. (1) Before July 1 of each even-numbered year, each state agency and institution shall submit to the department of administration, on forms furnished by the department, a proposed long range building program, if any, for the agency or institution. Each agency and institution shall furnish any additional information requested by the department relating to the utilization of, or need for buildings.

(2) The department shall examine the information furnished by each agency and institution and shall gather whatever additional information is

necessary, and conduct whatever surveys are necessary, in order to provide a factual basis for determining the need for, and the feasibility of the construction of buildings. The information compiled by the department shall be submitted to the governor before December 1 of each even-numbered year.

(3) During the first week of each regular legislative session, the governor shall submit to the legislative assembly:

(a) The requests of all state agencies and institutions compiled in the form of a comprehensive, long range proposed building program, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building, including necessary land acquisition.

(iii) The reasons given by the institution or agency for needing each building.

(iv) A priority order recommended by the agency or institution for each building.

(v) The recommendation of the institution or agency as to when each building is needed.

(vi) Any comments of the governor.

(b) A building program proposed by the governor for the forthcoming biennium in the form of a capital construction budget, including:

(i) The purpose for which each building would be used.

(ii) The estimated cost of each building and necessary land acquisition.

(iii) The reasons for the governor's recommendation to construct each building during the forthcoming biennium.

(iv) The proposed method of financing for each building.

(v) Any long range building plans.

(vi) Any changes in the law necessary to ensure an effective, well coordinated building program for the state.

History: En. Sec. 15, Ch. 271, L. 1963;
amd. Sec. 82, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted references to "department of administration" for "controller" throughout this section.

82-3315.1. Authority to enter into rental contract with option to purchase. When authorized by a vote of two-thirds ($\frac{2}{3}$) of the members of each house of the legislature, the department of administration shall have the authority, as part of the long range building program, to enter into a rental contract which provides an option to purchase a building to be used by the state or any department of state government.

History: En. 82-3315.1 by Sec. 1, Ch. 242, L. 1974.

Title of Act

An act authorizing the department of

administration to enter into rental contracts with option to purchase for buildings to be used by the state; amending section 82-1918, R. C. M. 1947, and providing an effective date.

82-3315.2. Location of building. The building shall be located as determined by the terms of the call for bids. If any such contract requires the

sale or lease of any interest in state lands, the contract must have prior approval of the state board of land commissioners.

History: En. 82-3315.2 by Sec. 2, Ch. 242, L. 1974.

82-3315.3. Security pledge. To ensure an adequate security provision for the lessor, the full faith and credit and taxing powers of the state of Montana are pledged in the amount necessary for the payment of rent incurred pursuant to a contract authorized by this act.

History: En. 82-3315.3 by Sec. 3, Ch. 242, L. 1974.

82-3315.4. Appointment of architect. The department of administration may appoint an architect to draw plans and specifications for the construction of a building authorized by this act, subject to the approval of the state board of examiners.

History: En. 82-3315.4 by Sec. 4, Ch. 242, L. 1974.

82-3315.5. Contract provisions. The rental contract shall be for a period not to exceed twenty (20) years with an option to purchase at the end of specific periods determined by the department of administration and clearly defined in the contract for each individual project. The option to purchase at the end of the contract period shall not exceed the amount of fifty thousand dollars (\$50,000). The contract shall provide for the appointment of a trustee with sufficient powers to protect the state's interest in the building and any property conveyed as a building site. The contract shall contain such other provisions as determined by the department of administration to be necessary.

History: En. 82-3315.5 by Sec. 5, Ch. 242, L. 1974.

82-3315.6. Rent payments. Each month the department or departments occupying the building shall pay rent in an amount determined by the department of administration to be sufficient to pay the total cost of renting and maintaining the building. All rents collected shall be deposited in a separate account and are hereby appropriated for the purpose of paying the contracted rental payments and the expense of maintaining the building. At any time the amount in the account is insufficient to pay a rental payment that is due, the department of administration is authorized to transfer from the general fund an amount sufficient to make the payment.

History: En. 82-3315.6 by Sec. 6, Ch. 242, L. 1974.

82-3315.7. Awarding contract. In awarding a contract, the department of administration shall follow the same procedures that are required for the award of a contract to construct a state-owned building. The department shall have the authority to reject any and all bids.

History: En. 82-3315.7 by Sec. 7, Ch. 242, L. 1974.

82-3315.8. Compliance with state laws and regulations. All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974.

82-3316. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars (\$25,000) may not be constructed without the consent of the legislative assembly. When a building costing more than twenty-five thousand dollars (\$25,000) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in section 75-8503, if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of the building will not result in any new programs.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974.

Compiler's Notes

Section 75-216, referred to in subdivision (2) (b) of this section, was repealed by Sec. 63, Ch. 2, Laws 1971. Similar provisions are now contained in sec. 75-8503.

Amendments

The 1967 amendment substituted "may" for "shall" after "such consent" near the end of subsection (1); substituted "Montana university system" for "university of Montana" near the beginning of subsection (2)(b); substituted "revenue producing facilities referred to in section

75-216" for "residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; and student union building and facilities" in subsection (2) (b); and added "if they are to be financed wholly from the revenue therein described" at the end of subsection (2)(b).

The 1974 amendment substituted "75-8503" in subdivision (2)(b) for "75-216"; and made a minor change in phraseology.

Effective Date

Section 3 of Ch. 13, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

82-3317. Supervision of construction of buildings. (1) For the construction of a building costing more than ten thousand dollars (\$10,000.00) the department of administration shall:

(a) Review and approve all plans and working drawings prepared by architects.

(b) Approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys.

(c) Under the supervision and with the approval of the board of examiners, solicit, accept and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount. Before any contract is awarded, two formal bids must have been received, if reasonably available.

(d) Review and, with the consent of the board of examiners, approve all change orders.

(e) Accept the building when completed according to approved plans and specifications.

(2) The department of administration is responsible for concurring in construction projects where the proposed cost is less than ten thousand dollars (\$10,000.00), but more than three thousand dollars (\$3,000.00). Before any contract is approved for construction, alteration, or improvement at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(3) The department need not require the provisions of Montana law relating to advertising, bidding or supervision where proposed construction costs are less than three thousand dollars (\$3,000.00).

(4) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping and furnishing during construction, repair or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction revolving account in the revolving fund.

(5) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 93, Ch. 326, L. 1974; amd. Sec. 2, Ch. 487, L. 1977.

Amendments

The 1969 amendment added subdivisions (f) and (g) to subsection (1).

The 1973 amendment inserted a new subdivision (2) and redesignated former subdivision (2) as (3).

The 1974 amendment substituted "department of administration" for "state controller" in subsection (1).

The 1977 amendment added "considering conformity * * * if reasonably available" to subdivision (1)(c); redesignated former subdivision (1)(f) as subsection (2); inserted "The department of administration is responsible for" at the beginning of subsection (2); redesignated former subdivision (1)(g) as subsection (3); redesignated former subsections (2) and (3) as subsections (4) and (5); and made minor changes in phraseology, punctuation and style.

82-3318. General powers and duties of department of administration. In carrying out powers relating to the construction of buildings the department of administration may:

(1) Inspect buildings not under construction.

(2) Contract with the federal government for advance planning funds.

(3) Purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark county and equipment and furnishings for such buildings.

(4) Issue and sell bonds and other securities.

(5) Maintain an inventory of all buildings.

(6) Appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to assure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against moneys available for construction.

History: En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965; amd. Sec. 84, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "de-

partment of administration" for "controller" at the beginning of the section; deleted a former subdivision (6) relating to a three-member advisory council (see parent volume); and made minor changes in punctuation.

82-3319. Appointment of architects and consulting engineers. The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled or renovated by the state of Montana, its boards, institutions and agencies, from a list of three (3) architects or consulting engineers proposed by the state board, institution or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974.

Amendments

The 1973 amendment added "from a list

of three (3) architects or consulting engineers proposed by the state board, institution or agency where the work is to be done" to the end of the first sentence.

The 1974 amendment substituted "department of administration" for "state controller."

82-3320. Policy regarding practice of architecture—preparation of working drawings by department limited. (1) * * * [Same as parent volume.]

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, when the total cost of the construction will exceed \$25,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977.

Amendments

The 1977 amendment increased the total cost limitation in subsection (2) from \$10,000 to \$25,000.

82-3321. Pecuniary interest in construction of buildings prohibited. Neither the director of administration nor any employee of the department of administration shall have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

History: En. Sec. 21, Ch. 271, L. 1963; amd. Sec. 85, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "director of administration" for "controller"; and made a minor change in punctuation.

82-3322 to 82-3324. Repealed.

Repeal

Sections 82-3322 to 82-3324 (Sec. 22, Ch. 271, L. 1963; Secs. 1, 2, Ch. 230, L. 1971), relating to the abolishment of various state agencies and transfer of their

records to the department of administration; and the division and administrator of communications, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-3325. Powers and duties of department of administration regarding communications. The department of administration shall:

(1) Provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points. The department shall adopt adequate rules for the use of any communications equipment and facilities now in use or hereafter made available;

(2) Exercise general supervision over all existing communications systems for all agencies of state government;

(3) Plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies;

(4) Approve standards and procedures for selection, acquisition, and operation of communication equipment;

(5) Insure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered;

(6) Provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(7) Provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the department may establish;

(8) Accept federal funds granted by Congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(9) Foster the development of new and innovative communications systems and techniques for state government, including but not limited to satellite communications, and high-speed, high-density data transfer. To carry out the purposes of this section the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

History: En. Sec. 3, Ch. 230, L. 1971; amd. Sec. 6, Ch. 215, L. 1974; amd. Sec. 86, Ch. 326, L. 1974; amd. Sec. 1, Ch. 315, L. 1975; amd. Sec. 1, Ch. 341, L. 1977.

Amendments

Chapter 215, Laws of 1974, substituted present subdivision (9) for a subdivision which read "To accept and provide for the technical transmission of programs provided by the division of educational television."

Chapter 326, Laws of 1974, substituted references to "department of administration" throughout the section for references to "division of communications";

substituted "section" for "act" in subdivision (8); deleted "the division of" in subdivision (9) before "educational television"; and made minor changes in punctuation and phraseology.

The 1975 amendment inserted "establish a centralized maintenance program for all state communications equipment and to" in subdivision (5).

The 1977 amendment substituted the subdivision (9) for a former subdivision (9) reading "Assist in providing interconnecting telecommunications relays among facilities of the educational broadcasting commission."

Repealing Clauses

Section 7 of Ch. 215, Laws 1974 read "Sections 75-5710 and 75-5711, R. C. M. 1947, are repealed."

Section 2 of Ch. 341, Laws 1977 read "Sections 75-9001 through 75-9004 and 82A-511, R. C. M. 1947, are repealed."

Effective Dates

Section 8 of Ch. 215, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 14, 1974.

Section 3 of Ch. 341, Laws 1977 provided the act should be effective on its passage and approval. Approved April 8, 1977.

82-3325.1. Transfer of funds, equipment, facilities, and employees. In order to provide for a centralized, economical, efficient and effective maintenance program for all state communications equipment and facilities and to ensure that needless duplication of efforts in this field do not occur, the department of administration may order such transfer of appropriated funds, custody and control of equipment and facilities and employees to the department as may be necessary to implement this program. Upon transfer, as authorized in this section, a credit account shall be established, in the name of the agency from which transfer is made, in the amount of funds appropriated and the market value of equipment and facilities. Such credit account shall be used to defray the costs of maintenance and repair as provided in section 82-3325 (5).

History: En. 82-3325.1 by Sec. 2, Ch. 315, L. 1975.

Title of Act

An act to establish a centralized com-

munications equipment maintenance program within the department of administration; providing for implementation of this act; and amending section 82-3325, R. C. M. 1947.

82-3325.2. Rights and privileges of employees transferred to department. The provisions of this act shall in no manner affect the rights or privileges of any employee transferred to the department of administration under the public employees' retirement system, the group insurance plan, or personnel system.

History: En. 82-3325.2 by Sec. 3, Ch. 315, L. 1975.

82-3326. Repealed.**Repeal**

Section 82-3326 (Sec. 4, Ch. 230, L. 1971), relating to the advisory council on

communications, was repealed by Sec. 1, Ch. 164, Laws 1973.

82-3327, 82-3328. Repealed.**Repeal**

Sections 82-3327 and 82-3328 (Secs. 5, 6, Ch. 230, L. 1971), relating to the transfer of funds, equipment, facilities and em-

ployees to the division of communications, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82-3329. Bases of director's decisions. It is incumbent on the department of administration to base all decisions pertinent to Montana's state communication services on the factors of cost, quality of service, availability of service, and ability to maintain the system.

History: En. Sec. 7, Ch. 230, L. 1971; amd. Sec. 87, Ch. 326, L. 1974.

partment of administration" for "director"; and made a minor change in punctuation.

Amendments

The 1974 amendment substituted "de-

82-3330. Co-operation with other government agencies not limited. This act shall not be construed so as to prohibit or limit a state agency from availing itself of connection to and co-operation with other state and federal agencies for the purpose of communications and information gathering and distributing services.

History: En. Sec. 8, Ch. 230, L. 1971.

82-3331. Exemption of law enforcement communications system—exception. The provisions of this act shall not apply to the law enforcement communications system, or its successor, except as to the provisions dealing with the purchase, maintenance, and allocation of communication facilities. However, the department of justice shall co-operate with the department of administration to co-ordinate the communications networks of the state.

History: En. Sec. 9, Ch. 230, L. 1971; amd. Sec. 88, Ch. 326, L. 1974.

tence for "law enforcement communications committee"; substituted "department of administration" in the second sentence for "division of communications"; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "department of justice" in the second sen-

82-3332. Short title. This act may be cited as the "Public Records Management Act".

History: En. 82-3332 by Sec. 1, Ch. 339, L. 1977.

ized records retention and destruction program for all state agencies; repealing sections 82-3311, 82-3312, and 82-3313, R. C. M. 1947.

Title of Act

An act to provide an efficient central-

82-3333. Purpose. The purpose of this act is to create an effective records management program for executive branch agencies of the state of Montana by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state records.

History: En. 82-3333 by Sec. 2, Ch. 339, L. 1977.

82-3334. Description and preservation of public records. (1) As used in this act, the term "public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(2) All public records are and shall remain the property of the state of Montana. They shall be delivered by outgoing officials and employees

to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this act.

History: En. 82-3334 by Sec. 3, Ch. 339, L. 1977.

82-3335. Department of administration—powers and duties—records management. In order to insure the proper management and safeguarding of public records, the department of administration shall undertake the following:

(1) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(2) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(3) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(4) gather and disseminate information on all phases of records management including current practices, methods, procedures, and devices for the efficient and economical management of records;

(5) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the department of administration; and

(6) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

History: En. 82-3335 by Sec. 4, Ch. 339, L. 1977.

82-3336. Agency responsibilities—transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling and transfer action in accordance with procedures prescribed by the department of administration and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the department of administration and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests which are submitted by the agency to the state records committee; and

(5) review established records retention schedules to insure that they are complete and current.

History: En. 82-3336 by Sec. 5, Ch. 339, L. 1977.

82-3337. Legislative and judicial branches. Upon request, the department of administration shall assist and advise in the establishment of rec-

ords management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

History: En. 82-3337 by Sec. 6, Ch. 339, L. 1977.

82-3338. Records committee—composition—meetings—powers and duties. (1) There is a committee to be known as the state records committee, composed of representatives of:

- (a) the department of administration;
- (b) the legislative auditor;
- (c) the attorney general; and
- (d) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall be submitted in writing to the director of the department of administration.

(3) The state records committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to determine which documents not included in the provisions of this act are to be designated public records and approve agency requests to dispose of such public records.

(4) The committee shall meet at least quarterly. Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 59-538, 59-539, and 59-801. Such expenses shall be paid from the appropriations made for operation of their respective agencies.

History: En. 82-3338 by Sec. 7, Ch. 339, L. 1977.

82-3339. Disposal of public records. Requests for the disposal of public records shall be submitted to the state records committee by the agency concerned. No public record may be disposed of or destroyed without the unanimous approval of the state records committee.

History: En. 82-3339 by Sec. 8, Ch. 339, L. 1977.

82-3340. Transfer of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government which may be abolished or discontinued shall be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if such records are considered to have permanent administrative or historical value.

(2) When records are transferred to the state records center, the agency so doing loses none of its rights of control and access. The state records center is only a custodian of the agency records, and access will only be by agency approval. Agency records for which the state records

center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(3) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the department of administration and request a change in the schedule.

History: En. 82-3340 by Sec. 9, Ch. 339, L. 1977.

82-3341. Protection of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the department of administration. The list shall be reviewed from time to time by the elected or appointed officers to insure its accuracy. Any changes or revisions shall be forwarded to the department of administration.

(2) Each elected and appointed officer of state government shall insure that the security of essential records is accomplished by the most economical means possible. Protection of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives, or any other method approved by the department of administration.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the department of administration.

History: En. 82-3341 by Sec. 10, Ch. 339, L. 1977.

Repealing Clause

Section 11 of Ch. 339, Laws 1977 read "Sections 82-3311, 82-3312, and 82-3313, R. C. M. 1947, are repealed."

CHAPTER 34—OPEN MEETINGS OF PUBLIC AGENCIES

Section

- 82-3402. Meetings of public agencies to be open to public—exceptions.
- 82-3403. Minutes of meetings—public inspection.
- 82-3404. Meeting defined.
- 82-3405. Recording.
- 82-3406. Voidability.

82-3402. Meetings of public agencies to be open to public—exceptions. All meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds shall be open to the public. Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy, and then if, and only if, the presiding officer determines that the demands of individual privacy clearly exceeds the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains

and, in that event, the meeting shall be open. However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977.

Amendments

The 1975 amendment substituted "Provided, however, the presiding officer of any meeting may close the meeting during the time any of the following items are discussed, if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed demerits of public disclosure" in the preliminary paragraph for "except as otherwise specifically provided by law and except any

meeting involving or affecting"; deleted former subdivisions (1) and (4); and redesignated the remaining subdivisions. For prior version, see parent volume.

The 1977 amendment substituted "time the discussion relates to a matter of individual privacy, and then" in the second sentence for "time any of the following items are discussed"; added the last two sentences; deleted former subdivisions (1) through (4) relating to matters requiring individual privacy; and made minor changes in phraseology and punctuation. For prior version, see parent volume and 1975 amendment note.

82-3403. Minutes of meetings—public inspection. (1) Appropriate minutes of all meetings required by 82-3402 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body, agency, or organization in attendance; and

(c) the substance of all matters proposed, discussed, or decided and, at the request of any member, a record, by individual members, of any votes taken.

History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977.

Amendments

The 1977 amendment designated the

former section as subsection (1); substituted "required by 82-3402" in the middle of the first sentence for "declared"; added subsection (2); and made a minor change in punctuation.

82-3404. Meeting defined. As used in this chapter, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977.

Title of Act

An act revising the open meetings law; allowing closed meetings for discussions

of collective bargaining or litigation; defining appropriate minutes and meetings; permitting tape recordings of open meetings; providing for voidability; amending sections 82-3402 and 82-3403, R. C. M. 1947.

82-3405. Recording. Accredited press representatives may not be excluded from any open meeting under this act and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977.

82-3406. Voidability. Any decision made in violation of 82-3402 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision.

History: En. 82-3406 by Sec. 5, Ch. 567, L. 1977.

Separability Clause

Section 6 of Ch. 567, Laws 1977 read "If a part of this act is invalid, all valid

parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 35—COMMISSION ON PROBLEMS OF AGING

Section

82-3504, 82-3505. [Transferred.]

82-3501 to 82-3503. Repealed.

Repeal

Sections 82-3501 to 82-3503 (Secs. 1 to 3, Ch. 73, L. 1965; Secs. 1 to 3, Ch. 12, L. 1967), relating to the creation and

composition of the committee on problems of the aging, were repealed by Sec. 52, Ch. 121, Laws of 1974.

82-3504, 82-3505. [Transferred.]

Compiler's Notes

Sections 43, 44, Ch. 121, Laws of 1974

renumbered these sections as secs. 71-2301 and 71-2302.

82-3506. Repealed.

Repeal

Section 82-3506 (Sec. 6, Ch. 73, L. 1965; Sec. 6, Ch. 12, L. 1967), relating to the report of the commission on aging, was

repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 36—MONTANA ARTS COUNCIL

Section

82-3601. Montana arts council created—purposes.

82-3602. Appointment of council members—qualifications.

82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members.

82-3604. Executive committee—functions.

82-3605. Employment of officers and employees—compensation.

82-3606. Duties of council.

82-3607. Gifts and donations.

82-3608. Contracts for services and co-operative endeavors.

82-3609. Fund-raising drives—deposit and use of proceeds.

82-3601. Montana arts council created—purposes. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: En. Sec. 1, Ch. 2, L. 1967.

Title of Act

An act creating the Montana arts council and prescribing its powers and duties.

82-3602. Appointment of council members—qualifications. The Montana arts council shall consist of fifteen (15) members appointed by the governor, by and with the consent of the senate. In so far as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

History: En. Sec. 2, Ch. 2, L. 1967.

82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members. The term of office of each member shall be five (5) years; provided, however, that of the members first appointed, five (5) shall be appointed for terms of one (1) year, five (5) for terms of three (3) years, and five (5) for terms of five (5) years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred in the performance of their duties as members of the council.

History: En. Sec. 3, Ch. 2, L. 1967; amd. Sec. 10, Ch. 51, L. 1974; amd. Sec. 55, Ch. 439, L. 1975.

eligible for reappointment during a one (1) year period following the expiration of his term."

Amendments

The 1974 amendment deleted a fourth sentence reading "Other than the chairman, no member of the council who serves a full five (5) year term shall be

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539 and 59-801" for "their actual and necessary expenses" in the last sentence.

82-3604. Executive committee—functions. The council may select an executive committee of five (5) members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967.

82-3605. Employment of officers and employees—compensation. The council may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: En. Sec. 5, Ch. 2, L. 1967; amd. Sec. 11, Ch. 51, L. 1974.

Repealing Clause

Section 12 of Ch. 51, Laws 1974 read "Sections 82A-503, 82A-504, 82A-505, 82A-506 and 82A-510, R. C. M. 1947, are repealed."

Amendments

The 1974 amendment substituted "council" for "chairman" at the beginning of the section.

Effective Date

Section 13 of Ch. 51, Laws 1974 provided that the act should be in effect

from and after its passage and approval.
Approved February 27, 1974.

82-3606. Duties of council. The duties of the council shall be:

- (1) To encourage throughout the state the study and presentation of the arts and to stimulate public interest and participation therein;
- (2) To co-operate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, painting, sculpture, architecture and allied arts and crafts and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;
- (3) To foster public interest in the cultural heritage of our state and to expand the state's cultural resources;
- (4) To encourage and assist freedom of artistic expression essential for the well-being of the arts;
- (5) To report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 2, L. 1967;
amd. Sec. 39, Ch. 93, L. 1969.

erence to the reporting requirements of section 82-4002 for former provision requiring reports to governor and legislature in even-numbered years.

Amendments

The 1969 amendment substituted the ref-

82-3607. Gifts and donations. The council may acquire, accept, receive, dispose of, and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the national foundation on the arts.

History: En. Sec. 7, Ch. 2, L. 1967;
amd. Sec. 11, Ch. 3, L. 1977.

Amendments

The 1977 amendment made minor changes in phraseology, punctuation and style.

82-3608. Contracts for services and co-operative endeavors. The council may contract with individuals, organizations and institutions for services or co-operative endeavors furthering the objectives of the council's programs.

History: En. Sec. 8, Ch. 2, L. 1967.

82-3609. Fund-raising drives—deposit and use of proceeds. The council may engage in such fund-raising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the earmarked revenue fund of the state treasury and may not be used for any purposes other than the improvement, development and operation and programs of the council.

History: En. Sec. 9, Ch. 2, L. 1967.

Effective Date

Section 10 of Ch. 2, Laws 1967 provided

the act should be in effect from and after its passage and approval. Approved January 19, 1967.

CHAPTER 37—PLANNING AND ECONOMIC DEVELOPMENT ACT

Section

82-3701. Short title.

82-3702. Declaration of necessity and public policy.

82-3705. Functions of department of community affairs—state planning.

82-3705.1. Functions of department of community affairs—community development.

82-3705.2. Functions of department of community affairs—recreational development.

82-3705.3. Functions of department of community affairs—economic development.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies.

82-3710. County land planning assistance.

82-3701. Short title. This chapter shall be known and may be cited as the "Montana Planning and Economic Development Act of 1967."

History: En. Sec. 1, Ch. 19, L. 1967; amd. Sec. 81, Ch. 348, L. 1974.

commerce; abolishing the planning board; and repealing sections 89-301 through 89-309, R. C. M. 1947.

Title of Act

An act creating a planning and economic development commission and a department of state government to foster planning, growth and diversification of industry and

Amendments

The 1974 amendment substituted "chapter" in this section for "act."

82-3702. Declaration of necessity and public policy. It is hereby declared to be a necessity and the public policy of the state to promote, stimulate, and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor, and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification, and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state, and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income, and promote the general welfare of the people of this state. The department of community affairs shall be regarded as performing a governmental function in carrying out the provisions of this chapter.

History: En. Sec. 2, Ch. 19, L. 1967; amd. Sec. 82, Ch. 348, L. 1974; amd. Sec. 43, Ch. 213, L. 1975.

partment hereinafter created"; substituted "chapter" for "act" in the last sentence; and made minor changes in punctuation and phraseology.

Amendments

The 1974 amendment substituted "department of intergovernmental relations" in the last sentence for "planning and economic development commission and de-

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" near the end of the paragraph.

82-3703, 82-3704. Repealed.**Repeal**

Sections 82-3703 and 82-3704 (Secs. 3, 4, Ch. 19, L. 1967), relating to the planning and economic development commission and its chairman, were repealed by Sec. 107, Ch. 348, Laws of 1974.

82-3705. Functions of department of community affairs—state planning. The department of community affairs shall:

(A) State Planning.

(1) Develop and adopt a comprehensive plan for the physical development of the state;

(2) Make economic and social studies needed to accomplish the purposes of this chapter;

(3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

(4) Assemble and correlate information for the purpose of making long range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action;

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving those sites;

(7) Apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this chapter, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys, and comprehensive plans.

History: En. Sec. 5, Ch. 19, L. 1967; amd. Sec. 83, Ch. 348, L. 1974; amd. Sec. 44, Ch. 213, L. 1975.

Amendments

The 1974 amendment inserted "of inter-governmental relations" at the beginning of the section after "department"; substituted "chapter" in subdivisions (A)(2) and (A)(7) for "act"; deleted former subdivisions (B), (C) and (D) which read:

"(B) Community Development.

"(1) Co-operate with and provide technical assistance to county, municipal, state and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly productive and co-ordinated development of the communities of the state.

"(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans.

"(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal, state financial and technical assistance.

"(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary. In carrying out such studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

"(C) Recreational Development.

"(1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities.

"(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminates the same to persons, firms or corporations with bona fide interest in con-

structing or maintaining recreational facilities open to the public.

"(D) Economic Development.

"(1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection therewith.

"(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial and industrial enterprises within this state.

"(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises.

"(4) Aid communities interested in obtaining new business or expanding existing business.

"(5) Study and promote means of expanding markets for Montana products.

"(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state"; and made minor changes in punctuation and phraseology.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in the introductory phrase.

82-3705.1. Functions of department of community affairs—community development. The department of community affairs shall: (1) Co-operate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and co-ordinated development of the communities of the state;

(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans;

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

History: En. 82-3705.1 by Sec. 84, Ch. Amendments

348, L. 1974; amd. Sec. 45, Ch. 213, L. 1975.

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" at the beginning of the section.

82-3705.2. Functions of department of community affairs—recreational development. The department of community affairs shall: (1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities;

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminate it to persons, firms, or corporations interested in constructing or maintaining recreational facilities open to the public.

History: En. 82-3705.2 by Sec. 85, Ch. 348, L. 1974; amd. Sec. 46, Ch. 213, L. 1975.

Amendments

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" at the beginning of the section.

82-3705.3. Functions of department of community affairs—economic development. The department of community affairs shall: (1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises;

(4) Aid communities interested in obtaining new business or expanding existing business;

(5) Study and promote means of expanding markets for Montana products;

(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

History: En. Sec. 82-3705.3 by Sec. 86, Ch. 348, L. 1974; amd. Sec. 47, Ch. 213, L. 1975.

Amendments

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" at the beginning of the section.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies. (1) The department of intergovernmental relations may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to accomplish its own research programs. It may perform research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the

university system. Other state agencies shall provide the department with information which will assist it in carrying out this chapter.

(2) The department shall assist and co-operate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

(3) It may consult with private groups and individuals, and if the department considers it desirable, hold public hearings to obtain information for the purposes of carrying out this chapter.

History: En. Sec. 6, Ch. 19, L. 1967; amd. Sec. 87, Ch. 348, L. 1974.

section designations; and made minor changes in phraseology.

Amendments

The 1974 amendment inserted "of inter-governmental relations" in the first sentence after "department"; substituted "chapter" for "act" at the end of subsections (1) and (3); inserted the sub-

Repealing Clause

Section 10 of Ch. 19, Laws 1967 read "Sections 89-301, 89-302, 89-303, 89-304, 89-305, 89-306, 89-307, 89-308, and 89-309, R. C. M. 1947 are repealed."

82-3707. Repealed.

Repeal

Section 82-3707 (Sec. 7, Ch. 19, L. 1967), relating to administrators of the

department of planning and economic development, was repealed by Sec. 107, Ch. 348, Laws of 1974.

82-3708. Repealed.

Repeal

Section 82-3708 (Sec. 8, Ch. 19, L. 1967), relating to the annual report of the planning and development commission, was

repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-3709. Repealed.

Repeal

Section 82-3709 (Sec. 9, Ch. 19, L. 1967), relating to the abolition of the

state planning board, was repealed by Sec. 107, Ch. 348, Laws of 1974.

82-3710. County land planning assistance. (1) The department of community affairs shall annually distribute the funds appropriated from the county land planning account as follows:

Each county shall be allotted \$3,000. After this disbursement has been made, 40% of the balance in the account shall be apportioned to the counties according to the ratio of each county's land area to the total land area of the state, and 60% of the balance shall be apportioned to the counties according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use such funds for land planning purposes.

(3) At the end of each fiscal year every local governing body and planning agency receiving funds under this section shall provide an ac-

counting of how the moneys were spent in a form acceptable to the department of community affairs. Any surplus of funds shall revert to the education trust fund account.

History: En. 82-3710 by Sec. 14, Ch. 502, L. 1975; amd. Sec. 4, Ch. 540, L. 1977.

Amendments

The 1977 amendment substituted "the funds appropriated from" in the first sentence of subsection (1) for "to all the counties in the state the funds in"; inserted the provision for allocating to each county \$3,000 in subsection (1); inserted "cities or joint planning boards" in subsection (2); substituted "land planning purposes" in subsection (2) for "the purposes of making inventories of land categories within their boundaries and of

classifying lands for taxation and planning programs"; deleted former subsection (3) which appropriated all funds in the county land planning account for the biennium ending June 30, 1977 for purposes of this section; redesignated former subsection (4) as subsection (3); substituted "every local governing body and planning agency receiving funds under this section" in subsection (3) for "the governing body of the affected county"; deleted "prorated" before "funds" in the last sentence of subsection (3); and made minor changes in phraseology, punctuation and style.

CHAPTER 38—POST-ENEMY-ATTACK CONTINUITY IN GOVERNMENT

Section

- 82-3801. Citation of act.
- 82-3802. Succession to governorship.
- 82-3803. Succession to boards of county commissioners.
- 82-3804. Succession in city or town governing bodies.
- 82-3805. Succession for city or town executives.
- 82-3806. Provision for quorum.
- 82-3807. Moving seat of state government.
- 82-3808. Moving seat of local government.
- 82-3809. Duration of operation of act.

82-3801. Citation of act. This act may be cited as "The Post-Enemy-Attack Continuity in Government Act."

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973.

Title of Act

An act to provide for post-enemy-attack continuity in government.

Amendments

The 1973 amendment deleted "and is in implementation of section 46, article V of the Montana constitution" from the end of the section.

82-3802. Succession to governorship. Following an enemy attack, the line of succession to the office of governor shall be extended to members of the legislative assembly in the order of their seniority. For purposes of this section the term "seniority" means the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two (2) or more members of the legislative assembly have equal seniority, the line of succession among them shall be from eldest to youngest in age.

History: En. Sec. 2, Ch. 268, L. 1967; amd. Sec. 47, Ch. 100, L. 1973.

forth in section 16, article VII of the constitution of Montana" after "office of governor" in the first sentence.

Amendments

The 1973 amendment deleted "as set

82-3803. Succession to boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or follow-

ing an enemy attack if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment, provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; amd. Sec. 48, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "as pro-

vided in section 4, article XVI of the Montana constitution" after "make the appointment" near the middle of the section.

82-3804. Succession in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967.

82-3805. Succession for city or town executives. In the event that the executive head of any city or town is unavailable, following an enemy attack, to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: En. Sec. 5, Ch. 268, L. 1967.

82-3806. Provision for quorum. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute then those legislators or members of the council, board, or commission available for duty shall constitute the legislature or board, or commission; and aforesaid quorum requirements shall be suspended; and, where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967.

82-3807. Moving seat of state government. Following an enemy attack in which the seat of state government at Helena has been rendered unsuitable for use in that capacity the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967.

82-3808. Moving seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as they deem most suitable.

History: En. Sec. 8, Ch. 268, L. 1967.

82-3809. Duration of operation of act. The provisions of this act shall become inoperative at the time of the convening of the first legislative assembly following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967.

CHAPTER 39—TELETYPEWRITER COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT

Section

- 82-3901. Establishment of communications system—inclusion of other state agencies.
- 82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties.
- 82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments.
- 82-3904. Participation in system by local and other agencies.
- 82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements.
- 82-3906. Attorney general's report.

82-3901. Establishment of communications system—inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype, and is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969.

Compiler's Notes

Chapter 145, Laws 1969 made permanent the law enforcement teletypewriter communications system. This chapter is identical to Ch. 1, Ex. Laws 1967 except for the insertion of "permanent" after "authorized to establish a" in section 1 (82-3901).

Title of Act

An act creating a state law enforcement teletypewriter communications system;

providing for an administrative committee to administer the provisions of the act; providing for duties of the state attorney general in administering the act; providing for charges to be established and providing for disposition of moneys collected; providing for an appropriation to carry out the provisions of the act.

Amendments

The 1969 amendment inserted "permanent" before "law enforcement teletypewriter communications system" near the beginning of the section.

82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties. To carry out the

provisions of the act, the governor shall appoint a state law enforcement teletypewriter communications committee consisting of seven (7) members, each member representing a governmental entity which is participating in the communications system. Membership in the committee shall be as follows:

One (1) county sheriff from a county of the first class.

One (1) county sheriff from a county other than a first class county.

One (1) chief of police from a city of the first class.

One (1) chief of police from a city other than a first class city.

One (1) county commissioner from a county not otherwise represented.

One (1) city mayor from a city not otherwise represented.

One (1) officer or employee of a state department or agency which participates in the communications system.

The term of office of members appointed to the committee shall be as follows: Three (3) of the original appointees shall serve three (3) year terms, such terms to be determined by lot or drawing among the members present at the initial meeting of the committee, and the balance of the members of the committee shall serve for two (2) years each. Vacancies on the committee shall be filled immediately by the governor. The committee shall meet at such times and at such locations as the attorney general may require and may elect officers. Members shall serve without committee compensation since, by the nature of their duties and official capacities, they are full-time, paid, state or subdivision employees subject to compensation and certain travel and per diem allowances in connection with their positions. The committee shall advise the attorney general as to the operation of the state law enforcement teletypewriter communications system, and shall suggest such changes as determined are necessary, and the attorney general shall, within the limits of the funds available under the provisions of this act, make every effort to effectuate the changes suggested, and shall work toward refinement of the system at all levels.

History: En. Sec. 2, Ch. 1, Ex. L. 1967;
amd. Sec. 2, Ch. 145, L. 1969.

Cross-References

Committee abolished and functions transferred, sec. 82A-1202(3).

Amendments

The 1969 amendment made no change in this section.

82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments. To carry out the provisions of this act, the attorney general is:

(a) Authorized to purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this act, but only after consultation with the committee, and only upon approval of the committee regarding actual physical equipment to be purchased or leased as herein provided.

(b) The attorney general is authorized to employ such personnel as may be necessary to operate such facilities, within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified, but only after approval of the committee.

(c) The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system. Such charge shall be approved by the communications committee and shall be billed monthly to the agencies, and payments made as a result of the billing shall be remitted to the attorney general and shall be deposited by him in a special account in the state treasurer's office, and the state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties. Law enforcement agencies, other than state of Montana or any of its subdivisions, that become ninety (90) days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the committee herein provided shall take the necessary steps to carry out this provision.

(d) A special assessment pro rata shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie, and this assessment shall be made monthly as is the operational assessment, and the same shall be transmitted and deposited and drawn by warrant as are other warrants as previously provided under (c) above, except that the assessment shall not be levied against the one central station for which the assessment is made. Assessments made under the provisions of this act shall be approved by the committee.

History: En. Sec. 3, Ch. 1, Ex. L. 1967;
amd. Sec. 3, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3904. Participation in system by local and other agencies. Any county, city, or other law enforcement agency may, with approval of the committee and the attorney general, connect to the system and participate in it upon payment of, or agreement to pay, those costs established by the committee.

History: En. Sec. 4, Ch. 1, Ex. L. 1967;
amd. Sec. 4, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements. The attorney general is hereby directed to contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general is hereby authorized to sign agreements with the federal agencies, subject to approval of the communications committee, and any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited to the credit of the communication fund and shall be used,

if at all possible, to reduce the spending of moneys as herein appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967;
amd. Sec. 5, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3906. Attorney general's report. The attorney general shall prepare a report in detail covering the operations of the communications network, the actions of the committee, the accounting of all moneys received and expended, and the need to expand or improve the system, and shall submit such report to the appropriations committee of every legislative assembly at the time funds are requested for the administration of this act.

History: En. Sec. 6, Ch. 1, Ex. L. 1967;
amd. Sec. 6, Ch. 145, L. 1969.

Appropriation

Section 7 of Ch. 1, Ex. Laws 1967 appropriated money for the 1967-1969 biennium.

Amendments

The 1969 amendment made no change in this section.

CHAPTER 40—ANNUAL REPORTS TO GOVERNOR

Section

82-4001. Definitions.

82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies.

82-4001. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "State agency" means any elective official, office, department, board, bureau, or commission which is of the executive branch of state government.

(2) "Elective official" means the superintendent of public instruction, board of railroad commissioners, secretary of state, attorney general, and state auditor.

History: En. Sec. 1, Ch. 93, L. 1969.

Title of Act

An act to establish uniform reporting requirements for all state executive agencies; amending sections 1-202, 3-106, 3-2914, 4-227, 5-902, 12-404, 26-124, 27-306, 32-2409, 41-803, 41-906, 44-403, 46-2306, 60-127, 62-504, 66-109, 66-408 66-513, 66-904,

66-1009, 66-1311, 66-1410, 66-1504, 66-2203, 66-2334, 69-4106, 70-111, 71-209, 75-107, 77-120, 80-1405, 81-1411, 82-111, 82-302, 82-1002, 82-1519, 82-3606, 87-120, 92-118, 94-9824, and 82-1916, R. C. M. 1947; and repealing sections 40-2712, 41-1607, 41-1608, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75-1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 82-3506, and 82-3708, R. C. M. 1947.

82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies. (1) Before September 1 of each year, each state agency shall submit a written report to the governor of its activities during the immediately preceding fiscal year.

(2) Each report shall contain information prescribed by the governor describing fully the activities of the state agency. Reports shall contain recommendations from each state agency for improvements in programs administered by it.

(3) State agency reports shall be filed in the governor's office and are open for inspection by any person.

(4) From the reports submitted to him the governor shall:

(a) delete extraneous or duplicated data;

(b) standardize the presentation of data to the extent feasible and desirable;

(c) request pertinent additional information he wishes included in the report;

(d) prepare a report for submission to the legislative assembly before the fifth legislative day of any regular session.

(5) Except as provided in subsection (6) of this section, the governor may authorize the publication of a state agency report in pamphlet form. The report in pamphlet form shall be published and distributed by the state agency responsible for reporting.

(6) An elective official may publish an annual report in pamphlet form, in addition to the report to the governor required by subsection (1) of this section, without permission from the governor.

(7) Copies of each report published as provided in subsections (4), (5) and (6) of this section shall be distributed as follows:

(a) two (2) copies to the secretary of state;

(b) two (2) copies to the legislative council;

(c) two (2) copies to the legislative auditor;

(d) one (1) copy to each member of the legislative assembly;

(e) two (2) copies to the director of the budget;

(f) two (2) copies to the librarian of the state historical society;

(g) at least four (4) copies to the state publications distribution center of the state library and additional copies as requested by the state library;

(h) additional distribution in the discretion of the governor or state agency.

History: En. Sec. 2, Ch. 93, L. 1969; amd. Sec. 1, Ch. 134, L. 1971.

Amendments

The 1971 amendment substituted "each year" for "each even-numbered year" in

subsection (1); substituted "fiscal year" for "fiscal biennium" at the end of subsection (1); and substituted "an annual report" for "a biennial report" in subsection (6).

CHAPTER 41—PUBLIC CONTRACTOR'S DEPOSITS FOR WITHDRAWAL OF RETAINED PAYMENTS

Section

82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited.

82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations.

82-4103. Interest or income on obligations to be paid to contractor—coupon bonds.

82-4104. Priority of deductions from retained payments and proceeds of deposited obligation.

82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited. The contractor under any contract heretofore or hereafter

made or awarded by the state of Montana, or any department, agency or political subdivision thereof, including any contract for the construction, improvement, maintenance or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under such contract which are retained by the state of Montana, or any department, agency or political subdivision thereof, pursuant to the terms of such contract provided the contractor shall deposit with the treasurer of the state of Montana (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness or United States treasury bills; or (2) bonds or notes of the state of Montana; or (3) bonds of any political subdivision of the state of Montana, of a market value not exceeding par, at the time of deposit; or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana and such deposited obligations shall be at least equal in value to the amount so withdrawn from payments retained under such contract.

History: En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971.

Title of Act

An act to allow contractors under contracts with the state of Montana, or any department, agency or political subdivision thereof, to deposit certain governmental obligations with the treasurer of the state of Montana in substitution for that portion of the payments otherwise due to such contractors under state contracts which are retained by the state of Mon-

tana, or any department, agency or political subdivision thereof, pursuant to the terms of such state contracts.

Amendments

The 1971 amendment inserted "or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana" near the end of the section; and made a minor change in phraseology.

82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations. The treasurer of the state of Montana shall have the power to enter into a contract or agreement with any national bank, state bank, trust company or safe deposit company located in the state of Montana, designated by the contractor, after notice to the owner and surety, to provide for the custodial care and servicing of any obligations deposited with him pursuant to this act. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this act.

History: En. Sec. 2, Ch. 194, L. 1969.

82-4103. Interest or income on obligations to be paid to contractor—coupon bonds. The treasurer of the state of Montana or any national bank, state bank, trust company or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to section 2 [82-4102] hereof, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation. If deposited in the form of coupon bonds, the treasurer of the state of Montana shall deliver each such coupon as it matures to the contractor.

History: En. Sec. 3, Ch. 194, L. 1969.

82-4104. Priority of deductions from retained payments and proceeds of deposited obligation. Any amount deducted by the state of Montana, or by any department, agency or political subdivision thereof, pursuant to the terms of a contract, from the retained payments otherwise due to the contractor thereunder, shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons or income only from those obligations which remain on deposit after such amount has been deducted.

History: En. Sec. 4, Ch. 194, L. 1969.

CHAPTER 42—ADMINISTRATIVE PROCEDURE ACT

Section

- 82-4201. **Short title.**
 82-4202. **Definitions.**
 82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules.
 82-4203.1. Legislative review of rules.
 82-4203.2. Administrative code committee—appointment and term of members—officers.
 82-4203.3. Meetings.
 82-4203.4. Appointment of employees and consultants.
 82-4203.5. Powers of the committee.
 82-4204. Adoption, amendment, or repeal of rules—emergency rules.
 82-4204.1. Authority for rules.
 82-4205. Filing of rules—effective date of rules.
 82-4206. Publication and distribution of rules and notices.
 82-4207. Petition for adoption of rules.
 82-4208. Judicial notice of rules.
 82-4209. Notice—hearing—record.
 82-4210. Rules of evidence—official notice.
 82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members.
 82-4212. Examination of evidence by agency—proposed orders.
 82-4213. Final orders—notification.
 82-4214. Ex parte consultations.
 82-4215. Licenses.
 82-4216. Judicial review of contested cases.
 82-4217. Appeals.
 82-4218. Declaratory rulings by agencies.
 82-4219. Declaratory judgments on validity or application of rules.
 82-4220. Subpoenas and enforcement—compelling testimony.
 82-4221. Representation.
 82-4222. Service.
 82-4223. Construction and effect.
 82-4224. Repeal of inconsistent provisions.
 82-4225. Severability.
 82-4226. Legislative intent.
 82-4227. Definitions.
 82-4228. Agency requirements.
 82-4229. Enforcement.

Title and Definitions

82-4201. Short title. This part (82-4201 through 82-4225) shall be known and may be cited as the "Montana Administrative Procedure Act".

History: En. Sec. 1, Ch. 2, Ex. L. 1971; for state administrative agencies, including: requirement for adoption of procedural rules; procedures for adoption, amendment or repeal of rules, including emergency rules; filing and publication
 amd. Sec. 1, Ch. 285, L. 1977.

Title of Act.

An act prescribing uniform procedures

of rules; judicial notice of rules; notice and hearing requirements for contested cases; procedures for contested case hearings; procedures for decision making in contested cases; judicial review of contested case decisions; declaratory rulings by agencies; declaratory judgments by courts regarding the validity and application of agency rules; subpoenas, subpoena

enforcement and compelling testimony for agency proceedings; and right to representation in agency proceedings; to provide an effective date.

Amendments

The 1977 amendment substituted "This part (82-4201 through 82-4225)" for "This act."

82-4202. Definitions. For purposes of this part, the following definitions apply:

(1) "Agency" means any agency, as defined in 82-4227, of the state government, except that the provisions of this part do not apply to the following:

(a) the state board of pardons, except that the board shall be subject to the requirements of 82-4203 and 82-4205 and its rules shall be published in the Montana administrative code and register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(2) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. Substantive rules are either legislative rules, which if adopted in accordance with this part and under expressly delegated authority have the force of law and when not so adopted are invalid, or adjective or interpretive rules, which may be adopted in accordance with this part and under express or implied authority to codify an interpretation of a statute although such interpretation lacks the force of law. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to 82-4218;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 82-4205 and shall be published in the Montana administrative code.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to rate making, price fixing, and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(6) "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public organization of any character other than an agency.

History: En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977.

Amendments

The 1977 amendment substituted "agency, as defined in 82-4227" near the beginning of subsection (1) for "board, bureau, commission, department, authority or officer"; deleted "authorized by law to make rules and to determine contested cases" after "state government" near the beginning of subsection (1); substituted "part do not" for "act shall not" near the beginning of subsection (1); deleted former subdivisions (1)(a) through (1)(d) reading "(a) the legislature and any branch, committee or officer thereof; (b) the judicial branches and any committee or officer thereof; (c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof; (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack"; redesignated former subdivisions (1)(e) through (1)(h) as subdivisions (1)

(a) through (1)(d); deleted "mental, medical or eleemosynary" before "institution" in subdivision (1)(b); deleted "admission, release" before "institutional supervision" in subdivision (1)(b); substituted "youths or" for "inmates" in subdivision (1)(b); deleted "or patients" from the end of subdivision (1)(b); substituted subdivision (1)(c) for "the administration and management of educational institutions"; inserted the second sentence in subsection (2); deleted a former subdivision (2)(c) reading "intra agency memoranda"; redesignated former subdivisions (2)(d) through (2)(g) as subdivisions (2)(c) through (2)(f) respectively; substituted subdivision (2)(c) for "rules relating to personnel standards, job classifications or salary ranges for agency employees"; substituted "82-4205" in subdivision (2)(f) for "section 10 of this act"; deleted "and register" from the end of subdivision (2)(f); inserted "transfer" in subsection (5); and made minor changes in phraseology, punctuation and style.

Rule Making

82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules. (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in 82-4204 do not apply to adoption of a rule relating to a description of its organization.

(b) adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(c) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(d) upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 82-4203(1). The attorney general shall add to, amend, or revise the model rules from time to time as he considers necessary for the proper guidance of agencies. The model rules and additions, amendments, or revisions thereto shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rule-making procedures required by this part.

History: En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977.

(3) and made minor changes in phraseology, punctuation and style.

Property Appraisal Plan

Where department of revenue adopted appraisal plan without full consideration of alternatives and taxpayer objections, and failed to prepare a concise statement of the principal reasons for adoption of the plan and for overruling objections to it, this section was not complied with and the plan was invalid. *Patterson v. State*, Department of Revenue, — M —, 557 P 2d 798.

Amendments

The 1974 amendment inserted the second sentence of subdivision (1)(a); and made a minor change in style.

The 1977 amendment deleted "as soon as is practicable after the passage of this act" after "shall prepare" near the beginning of subsection (3); substituted "part" for "act" at the end of subsection

82-4203.1. Legislative review of rules. (1) The legislature may, by joint resolution, repeal any rule in the Montana administrative code. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also, by joint resolution, direct a change to be made in any rule in the Montana administrative code or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall, in the joint resolution, state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the

Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

(3) Rules made by agencies and changes in rules directed by the legislature under subsection (2) of this section, shall conform and be pursuant to statutory authority.

History: En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974; amd. Sec. 4, Ch. 285, L. 1977.

Title of Act

An act providing for legislative review of administrative rules.

Amendments

The 1974 amendment substituted "any rule in the Montana administrative code" in the first sentence of subsection (3) for "rules transmitted to it"; and added subsections (4) and (5).

The 1977 amendment deleted former subsections (1) and (2) which required the secretary of state to transmit to the senate and house of representatives one copy of all rules in the Montana administrative code, not including superseded or repealed rules and one copy of all rules adopted or amended by the agencies since the convening of the previous session; redesignated former subsections (3) through (5) as subsections (1) through (3); and made minor changes in phraseology and punctuation.

82-4203.2. Administrative code committee—appointment and term of members—officers. The administrative code committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. No more than two of the appointees of each house may be members of the same political party. A member of the committee shall serve until his term of office as a legislator ends or until the end of the 60th legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first. The committee shall elect one of its members as chairman and such other officers as it considers necessary.

History: En. 82-4203.2 by Sec. 1, Ch. 410, L. 1975; amd. Sec. 5, Ch. 285, L. 1977.

Title of Act

An act creating a permanent joint interim committee of the legislature known as the administrative code committee; providing for the review of rules proposed

to be adopted under the administrative procedure act by the committee; amending section 82-4204, R. C. M. 1947; and providing an effective date.

Amendments

The 1977 amendment made minor changes in phraseology and style.

82-4203.3. Meetings. The committee shall meet as often as may be necessary during and between legislative sessions. Committee members are entitled to receive compensation and expenses as provided in 43-310.1.

History: En. 82-4203.3 by Sec. 2, Ch. 410, L. 1975; amd. Sec. 9, Ch. 103, L. 1977.

Amendments

The 1977 amendment substituted the second sentence for a sentence reading "Committee members shall be reimbursed from the appropriation to the legislative council for their actual and necessary ex-

penses incurred as a result of interim meetings, and paid compensation as provided by law for interim standing committees"; and made a minor change in punctuation.

Repealing Clause

Section 10 of Ch. 103, Laws 1977 read "Section 43-311 and 43-714, R. C. M. 1947, are repealed."

Effective Date

Section 11 of Ch. 103, Laws 1977 provided the act should be in effect from

and after its passage and approval. Approved March 25, 1977.

82-4203.4. Appointment of employees and consultants. The administrative code committee may retain whatever employees, consultants, or counsel as are necessary to carry out the provisions of this part and to advise the publisher in relation to the text and legal authority of the material published in the register or the code, within the limitations of legislative appropriations.

History: En. 82-4203.4 by Sec. 3, Ch. 410, L. 1975; amd. Sec. 6, Ch. 285, L. 1977.

Amendments

The 1977 amendment substituted "re-

tain" for "appoint"; substituted "part" for "act"; inserted "and to advise the publisher in relation to the text and legal authority of the material published in the register or the code"; and made a minor change in phraseology.

82-4203.5. Powers of the committee. (1) The committee shall review all proposed rules filed with the secretary of state and may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rule-making hearing will not be held in accordance with the provisions of 82-4204;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rule-making hearing;

(c) require that a rule-making hearing be held in accordance with the provision of 82-4204;

(d) if the legislature is not in session, poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature, provided that the poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature; or

(e) should 20 or more legislators object to any rule, the committee shall poll the members of the legislature under subsection (d).

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 82-4203.1.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 285 and once by Ch. 561. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 285, Laws of 1977, substituted "filed with the secretary of state" near the beginning of the section for "referred to it under section 82-4204; substituted "require" for "request" at the beginning of subdivision (1)(c); and made minor changes in phraseology, punctuation and style.

Chapter 561, Laws of 1977, inserted subdivisions (1)(d) and (1)(e); and made minor changes in phraseology and punctuation.

82-4204. Adoption, amendment, or repeal of rules—emergency rules.

(1) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(a) give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in 82-4206(2) and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least 30 days in advance of the agency's intended action. If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case may the notice period be less than 30 days or more than 6 months.

(b) afford interested persons at least 20 days' notice of a hearing and 28 days to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either 10% or 25 of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. An agency may continue a hearing date for cause. Contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein alters that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under subsections (1)(a) and (1)(b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review.

(3) No rule is valid unless adopted in substantial compliance with subsections (1) or (2) of this section and within 6 months of the publishing of notice thereof.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this part.

(5) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977.

Amendments

Chapter 410, Laws of 1975 inserted subdivision (1)(c).

Chapter 482, Laws of 1975 substituted "fourteen (14) days" for "reasonable opportunity" at the beginning of subdivision (1)(b); and inserted "An interested person may file a written request with the agency to extend a hearing date up to twenty (20) days" in the middle of subdivision (1)(b).

The 1977 amendment inserted "rationale for the intended action" near the beginning of subdivision (1)(a); substituted "30 days" for "twenty (20) days" near the middle and near the end of subdivision (1)(a); added "or more than 6 months" to the end of subdivision (1)(a); substituted "at least 20 days' notice of a hearing and 28 days to submit data" in subdivision (1)(b) for "fourteen (14) days to submit data"; substituted the third sentence of subdivision (1)(b) for "An interested person may file a written request with the agency to extend a hearing date up to twenty (20) days"; deleted "if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter" before

"shall issue" in the last sentence of subdivision (1)(b); deleted a former subdivision (1)(c) reading "Refer each rule proposed to be adopted, following compliance with paragraphs (a) and (b), to the administrative code committee of the legislature"; deleted "adopted after the effective date of this act" after "No rule" in subsection (3); substituted "(1) or (2)" for "(1) and (2)" in subsection (3); added "and within 6 months of the publishing of notice thereof" to the end of subsection (3); and made minor changes in phraseology, punctuation and style.

Effective Date

Section 6 of Ch. 410, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 14, 1975.

Contemplated Purpose

Where state legislature cut petitioner's budget \$1,600,000, and to avoid budgetary crisis it was necessary to curtail some programs immediately, emergency rule which allowed curtailment of medically needy program was within contemplated purpose of this section, and department was entitled to enact emergency rule. State ex rel. Department of Social and Rehabilitation Services v. Cole, — M —, 538 P 2d 1031.

82-4204.1. Authority for rules. (1) Except as provided in 82-4203, nothing in this part confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule. To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(2) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

History: En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977.

Title of Act

An act for the general revision of the

laws relating to administrative procedure; amending sections 82-4201 through 82-4208, 82-4212, 82-4213, 82-4215, 82-4216, 82-4217, 82-4220 through 82-4223, 82-4227 through 82-4229, and 82A-107, R. C. M. 1947.

82-4205. Filing of rules—effective date of rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it. Each rule shall become effective after publication in the Montana administrative register as provided in 82-4206, except that:

(a) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(b) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the Montana administrative register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

(2) The secretary of state may prescribe a format, style, and arrangement for rules which are filed pursuant to this part and may refuse to accept the filing of any rule that is not in compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 82-4203.5, the results of the poll shall be published with the rule, and shall be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find the proposed rule is contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

History: En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 285 and once by Ch. 561. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 285, Laws of 1977, deleted a former subsection (1) which required each agency to file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of the act and remaining in effect, and any rule not so filed would be void; substituted "copy of each rule adopted by it"

at the end of the first sentence of subsection (1) for "certified copy of each rule adopted by it subsequent to the effective date of this act"; substituted "after publication in the Montana administrative register" in the second sentence of subsection (1) for "ten (10) days after publication in the Montana administrative register or code; substituted "following publication in the Montana administrative register" in the first sentence of subdivision (1)(b) for "less than ten (10) days following publication in the Montana administrative code or register"; and made minor changes in phraseology, punctuation and style.

Chapter 561, Laws of 1977, added the subsection relating to a poll of the legislature by the administrative code committee; and made minor changes in style.

82-4206. Publication and distribution of rules and notices. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this part in a publication which shall be known as the administrative rules of Montana (herein referred to as the code). However, this does not require the republication of rules which have been published under the name "Montana Administrative Code". The secretary of state shall supplement, revise, and publish the code, or any part thereof, as often as he considers necessary. He may include such editorial notes, cross references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to the code at such times and in such form as he considers appropriate.

(2) The secretary of state shall each month or at more frequent intervals compile and publish the Montana administrative register (herein referred to as the register). The register shall contain three sections, a rules section, a notice section, and an interpretation section.

(a) The rules section of the register shall contain all rules filed since the compilation and publication of the preceding issue of the register together with the concise statement of reasons required under 82-4204(1)(b).

(b) The notice section of the register shall contain all rule-making notices filed with the secretary of state pursuant to 82-4204 since the compilation and publication of the preceding register.

(c) The interpretation section of the register shall contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(d) Each issue of the register shall contain the issue number and date of the register and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the Montana administrative code.

(3) The secretary of state, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and if the code or register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The secretary of state shall distribute copies of the code and supplements or revisions thereto without charge to the following:

(a) attorney general, one copy;

(b) clerk of each court of record of this state, one copy;

(c) clerk of United States district court for the district of Montana, one copy;

(d) clerk of United States court of appeals for the ninth circuit, one copy;

(e) each county clerk of this state, for use of county officials and the public, one copy, which may be maintained in a public library in the county seat or in the county offices;

(f) state law library, one copy;

(g) state historical society, one copy;

(h) each unit of the Montana university system, one copy;

(i) law library of the university of Montana, one copy;

(j) legislative council, three copies;

(k) library of congress, one copy;

(l) state library, one copy.

(6) The secretary of state, clerk of each court of record in the state, clerk of each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(7) The secretary of state shall make copies of and subscriptions to the code and supplements or revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

(8) The secretary of state shall determine the cost of supplying copies of the code and supplements or revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code and supplements or revisions thereto and the register.

(9) The secretary of state shall publish all notices, rules, and interpretations filed with him, at least once a month or as directed by the administrative code committee but not more often than twice a month, in a publication called the Montana administrative code register. He shall send the register without charge to each person listed in 82-4206(5) and to each member of the legislature requesting the same. He shall send the register to any other person who pays a subscription fee which he shall fix in consultation with the administrative code committee.

(10) The secretary of state shall deposit all fees he collects in the general fund.

(11) The secretary of state may charge agencies a filing fee for all material to be published in the code or register based on an estimated cost of printing, which he shall fix in consultation with the administrative code committee.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; as is practicable after the effective date of this act" after "secretary of state shall" near the beginning of subsection (1); inserted "arrange, rearrange, correct errors or inconsistencies without

Amendments

The 1977 amendment deleted "as soon

changing the meaning, intent, of effect of any rule" in the first sentence of subsection (1); substituted the second sentence of subsection (1) for a sentence reading "The code shall be printed or otherwise duplicated, in looseleaf form"; substituted "supplement, revise, and publish" in the third sentence of subsection (1) for "revise"; added the last two sentences to subsection (1); inserted "or at more frequent intervals" in the first sentence of subsection (2); increased the number of sections the register may contain from 2 to 3 sections by the addition of an interpretation section in subsection (2); substituted "together with the concise statement of reasons required under 82-4204(1)(b)" in subdivision (2)(a) for "and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5(1) be published in the register"; deleted a sentence at the end of subdivision (2)(a) requiring that the register be printed or duplicated in the same style as the code and set up to permit changes; deleted from the end of subdivision (2)(b) a reference to the first issue of the register since the effective date of the act and two sentences requiring that it be printed or duplicated in a manner distinguishable from the rules section so that separate copies could be provided on request to secretary of state and that secretary might require payment of cost for providing copies; inserted subdivision (2)(c); redesignated former subdivision (2)(c) as subdivision (2)(d); deleted "a title page with the name Montana administrative register" after "shall contain" in the first sentence of subdivision (2)(d); deleted "instructions or" before "information" in the third sentence of subdivision (2)(d); sub-

stituted "relating the register to the Montana administrative code" at the end of subdivision (2)(d) for "correctly making insertions or deletions in the code and to keep the code current"; substituted "merely incorporates by reference a model code, federal agency rule, or like publication" in subsection (3) for "in printed or duplicated form is"; inserted "citation and" in subsection (3); inserted "and supplements or" in subsection (5); added "which may be maintained in a public library in the county seat or in the county offices" to subdivision (5)(e); substituted "state library, one copy" in subdivision (5)(1) for "State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies"; deleted a final clause from the end of subsection (5) reading "Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies"; designated the former last paragraph of subsection (5) as subsection (6); substituted "supplements or revisions thereto" for "revisions thereto and additions or changes published in the register" at the end of the first sentence in subsection (6); substituted "the register issues published" for "a file of rule-making notices" in the second sentence of subsection (6); substituted "set of the registers" for "register of rule-making notices" at the end of subsection (6); redesignated former subsections (6) and (7) as subsections (7) and (8); inserted "and supplements or" throughout subsections (7) and (8); inserted subsection (9); redesignated former subsection (8) as subsection (10); added subsection (11); and made minor changes in phraseology, punctuation and style.

82-4207. Petition for adoption of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with 82-4204.

History: En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974; amd. Sec. 12, Ch. 285, L. 1977.

Amendments

The 1974 amendment inserted "or, when

the legislature is not in session, a member of the legislature on behalf of an interested person" in the first sentence; and made a minor change in style.

The 1977 amendment made minor changes in punctuation and style.

82-4208. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this part.

History: En. Sec. 8, Ch. 2, Ex. L. 1971; Amendments
amd. Sec. 13, Ch. 285, L. 1977.

The 1977 amendment substituted "part"
for "act."

Contested Cases

82-4209. Notice — hearing — record. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(5) The record in a contested case shall include:

(a) All pleadings, motions, intermediate rulings.

(b) All evidence received or considered, including a stenographic record of oral proceedings when demanded by a party.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing examiner or agency member presiding at the hearing.

(g) All staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(6) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party.

(7) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.

History: En. Sec. 9, Ch. 2, Ex. L. 1971.

Standing

Where member of public service commission dissented on decision to increase cost to customers of electric company as fuel costs increased and sued to vacate

and set aside commission's rate order, he had no standing to bring suit because he was not "party in interest," which means party outside decision-making process. *McTaggart v. Public Service Commission*, — M —, 541 P 2d 778.

Written Transcript

Where, in contested case, board of personnel appeals submitted to the reviewing court only a tape recording of the proceedings before it, the court could properly

order it to furnish a written transcript in compliance with this section. State ex rel. Board of Personnel Appeals v. District Court, — M —, 556 P 2d 1238.

82-4210. Rules of evidence—official notice. (1) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

History: En. Sec. 10, Ch. 2, Ex. L. 1971.

82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members. (1) An agency shall have authority to appoint hearing examiners for the conduct of hearings in contested cases.

(2) Agency members or hearing examiners presiding over hearings shall be authorized to administer oaths or affirmations; issue subpoenas pursuant to section 20 [82-4220] of this act; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties. All testimony shall be given under oath or affirmation.

(3) A hearing examiner or agency member may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case.

History: En. Sec. 11, Ch. 2, Ex. L. 1971.

82-4212. Examination of evidence by agency—proposed orders. When in a contested case a majority of the officials of the agency who are to

render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency. If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties. The parties may waive compliance with this section by written stipulation.

History: En. Sec. 12, Ch. 2, Ex. L. 1971; less he becomes unavailable to the agency" at the end of the second sentence for "or one who has read the record"; inserted the third sentence; and made a

Amendments: The 1977 amendment substituted "un- minor change in phraseology.

82-4213. Final orders—notification. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. Each conclusion of law shall be supported by authority or by a reasoned opinion.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 82-4218. No such agency decision or order is valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

History: En. Sec. 13, Ch. 2, Ex. L. 1971; sentence to subsection (1); deleted "issued after the effective date of this act" from the end of the first sentence in subsection (2); and made minor changes in phraseology, punctuation and style.

Amendments: The 1977 amendment added the last

82-4214. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection

with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

History: En. Sec. 14, Ch. 2, Ex. L. 1971.

82-4215. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this part concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

History: En. Sec. 15, Ch. 2, Ex. L. 1971; Amendments
amd. Sec. 16, Ch. 285, L. 1977.

The 1977 amendment inserted "transfer" in subsection (1); substituted "part" for "act" in subsection (1); and made minor changes in punctuation.

82-4216. Judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this part. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or if a rehearing is requested, within 30 days after the decision

thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in subsection (7) of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms which it considers proper.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested.

History: En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977.

Amendments

The 1977 amendment inserted the subdivision designations in subsections (1) and (2); substituted "part" for "act" in the first sentence of subdivision (1)(a); and made minor changes in phraseology, punctuation and style.

Exhaustion of Remedies

Where public service commission failed, refused or neglected to act on petitioner's application for interim rate increase to meet increased costs, action was arbitrary and supreme court would remand cause and order prompt action of petition. State ex rel. Great Falls Gas Co. v. Department of Public Service Regulation, Public Service Commission, — M —, 544 P 2d 815.

Judicial Review

Appeal of an administrative decision of

the county welfare board does not constitute an action against the county, and such appeal is properly brought in the county where the plaintiff resides. State ex rel. Hendrickson v. Gallatin County, — M —, 526 P 2d 354.

Underlying Principles

Three principles underlie this section: (1) that limited judicial review of administrative decisions strengthens the administrative process by encouraging the full presentation of evidence at the initial administrative hearing; (2) judicial economy requires court recognition of the expertise of administrative agencies in the field of their responsibility; and (3) limited judicial review is necessary to determine that a fair procedure was used, that questions of law were properly decided, and that the decision of the administrative body was supported by substantial evidence. Vita-Rich Dairy, Inc. v. Department of Business Regulation, — M —, 553 P 2d 980.

82-4217. Appeals. An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971; amd. Sec. 18, Ch. 285, L. 1977.

Amendments

The 1977 amendment substituted "part" for "act" in the first sentence; and made minor changes in punctuation and style.

General Provisions

82-4218. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule

or order of the agency. A declaratory ruling, or the refusal to issue such a ruling, shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971.

82-4219. Declaratory judgments on validity or application of rules. A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff. A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute, as evidenced by documented legislative intent. If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in the preceding sentence, the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute. The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

History: En. Sec. 19, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 560, L. 1977.

at the beginning of the first sentence for "The validity or application of a rule may be determined"; inserted the second and third sentences; and made minor changes in punctuation.

Amendments

The 1977 amendment substituted "A rule may be declared invalid or inapplicable"

82-4220. Subpoenas and enforcement—compelling testimony. (1) An agency conducting any proceeding subject to this part shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make such application. The court shall

hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

(3) Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

History: En. Sec. 20, Ch. 2, Ex. L. 1971; **Saving Clause**
amd. Sec. 19, Ch. 285, L. 1977.

Section 30 of Ch. 285, Laws 1977, read "Section 82-4220(3), R. C. M. 1947, does not apply to a contested case for which the initial notice of hearing was issued prior to March 15, 1977."

Amendments

The 1977 amendment substituted "part" for "act" in subsection (1); added subsection (3); and made minor changes in phraseology and punctuation.

82-4221. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by council. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this part shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971;
amd. Sec. 20, Ch. 285, L. 1977.

Amendments

The 1977 amendment substituted "part" for "act" in the last sentence; and made a minor change in punctuation.

82-4222. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this part and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971;
amd. Sec. 21, Ch. 285, L. 1977.

Amendments

The 1977 amendment substituted "part" for "act"; and made a minor change in punctuation.

82-4223. Construction and effect. Nothing in this part shall be considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be considered to supersede or modify any provision of this part, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971;
amd. Sec. 22, Ch. 285, L. 1977.

Amendments

The 1977 amendment substituted "part" for "act" twice; and made minor changes in phraseology.

82-4224. Repeal of inconsistent provisions. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

History: En. Sec. 24, Ch. 2, Ex. L. 1971.

82-4225. Severability. The provisions of this act are severable, and if any part of provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining part of provisions of this act.

History: En. Sec. 25, Ch. 2, Ex. L. 1971.

read "Time of taking effect. This act shall take effect on December 31, 1972, except that pending proceedings shall not be affected."

Effective Date

Section 26 of Ch. 2, Ex. Laws 1971

82-4226. Legislative intent. The legislature finds and declares pursuant to the mandate of article II, section 8, of the 1972 Montana constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975.

8 of the 1972 constitution by providing guidelines for citizen participation in the operations of government agencies.

Title of Act

An act to implement article II, section

82-4227. Definitions. As used in this chapter:

(1) "agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

- (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
- (b) declaratory rulings as to the applicability of any statutory provision or of any rule; however, the declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 82-4213(2) and 82-4218.

(3) "agency action" means the whole or a part of an agency rule, license, order, or contract or the equivalent or denial thereof.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977.

452. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 285 and once by Ch.

Amendments

Chapter 285, Laws of 1977, substituted

"chapter" for "act" near the beginning of the section; inserted "determine contested cases, or enter into contracts" in subsection (1); deleted a subdivision (2) (c) reading "intra-agency memoranda"; added subsection (3); and made minor

changes in phraseology, punctuation and style.

Chapter 452, Laws of 1977, added "however * * * and 82-4218" to subdivision (2)(b).

82-4223. Agency requirements. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(2) An agency shall be considered to have complied with the notice provisions of this section if:

(a) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 69, chapter 65;

(b) a proceeding is held as required by the Montana Administrative Procedure Act;

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(4) The provisions of this section do not apply to:

(a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(c) a decision involving no more than a ministerial act.

(5) The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977.

Amendments

Chapter 285, Laws of 1977, substituted "agency action is taken" in the second sentence of subsection (1) for "decision is made on the adoption of a rule or policy, awarding a contract, granting or denying a permit, license or change of rate"; substituted "section" for "act" in the introductory paragraphs of subsections (2) and (4); deleted "Title 82, chapter 42" at the end of subdivision (2)(b);

Compiler's Notes

This section was amended twice in 1977, once by Ch. 285 and once by Ch. 452. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

and made minor changes in phraseology and punctuation.

Chapter 452, Laws of 1977, substituted "sufficiently prior to a final decision to permit public comment on the matter" at the end of subsection (2)(d) for "prior to a final decision on a matter"; and substi-

tuted "The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules" at the beginning of subsection (5) for "Each agency shall adopt guidelines."

82-4229. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under 82-4228 upon petition of any person whose rights have been prejudiced, made within 30 days of the date of the decision.

History: En. 82-4229 by Sec. 4, Ch. 491, L. 1975; amd. Sec. 25, Ch. 285, L. 1977.

Amendments

The 1977 amendment substituted "82-4228" for "this act"; and made minor changes in punctuation and style.

CHAPTER 43—STATE INSURANCE PLAN AND TORT CLAIMS

Section

- 82-4301. **Short title.**
- 82-4302. **Definitions.**
- 82-4303. Comprehensive insurance plan for state—risks insured—deductible insurance.
- 82-4304. Compliance with state plan required.
- 82-4305. Apportionment of costs—creation of deductible reserve.
- 82-4306. Political subdivisions.
- 82-4308. Conditions construed in compliance with act—customary exclusions.
- 82-4309. Political subdivision tax levy to pay premiums.
- 82-4310. Governmental entities liable for torts except as specifically provided by the legislature.
- 82-4311. Filing of claims against state—time of filing.
- 82-4312. Filing of claims against political subdivisions—time for filing.
- 82-4312.1. Limitation of actions.
- 82-4316.1. Court approval of attorney's fees.
- 82-4318. Compromise or settlement of claim against political subdivision.
- 82-4319. Compromise or settlement of claim against state.
- 82-4320. Jurisdiction of district court—rules of procedure.
- 82-4321. **Venue of actions.**
- 82-4322. Service of summons on state.
- 82-4322.1. Legislative purpose.
- 82-4323. Governmental entity to be joined as defendant—employees immune from personal liability or from suit in certain cases—recovery against governmental entity bar to recovery against employee—indemnity.
- 82-4324. Punitive damages, attorney fees, interest.
- 82-4325. Recovery from appropriations if no insurance.
- 82-4327. Attachment, execution.
- 82-4328. Immunity from suit for legislative acts and omissions.
- 82-4329. Immunity from suit for judicial acts and omissions.
- 82-4330. Immunity from suit for certain gubernatorial actions.
- 82-4331. Immunity from suit for certain actions by local elected executives.
- 82-4332. State or other governmental entity immune from exemplary and punitive damages.
- 82-4333. Actions under invalid law or rule—same as if valid—when.
- 82-4334. Limitation on governmental liability for damages in tort—petition for relief in excess of limits.
- 82-4335. Judgments against governmental entities except state—how satisfied.

82-4301. Short title. This act shall be known and may be cited as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

History: En. Sec. 1, Ch. 380, L. 1973.

Title of Act

An act providing for a comprehensive

state insurance plan and tort claims procedure to be known as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

82-4302. Definitions. As used in this act:

(1) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

(2) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

(5) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease or death, sustained by any person and caused by an occurrence, for which the state may be held liable.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence, for which the state may be held liable.

(7) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state of Montana.

History: En. Sec. 2, Ch. 380, L. 1973.

82-4303. Comprehensive insurance plan for state—risks insured—deductible insurance. (1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in this chapter.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, and fidelity and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.

History: En. Sec. 3, Ch. 380, L. 1973; amd. Sec. 1, Ch. 143, L. 1974; amd. Sec. 1, Ch. 360, L. 1977.

Amendments

The 1974 amendment inserted "purchased for protection" in the first paragraph; and substituted "determined and set by the department of administration" in the first sentence of the second para-

graph for "not less than the minimum specified in section 7 [82-4307] of this act."

The 1977 amendment inserted the subsection designations; deleted the final sentence of subsection (3) which prescribed the maximum amount deductible in an insurance plan; and made minor changes in phraseology and punctuation.

82-4304. Compliance with state plan required. Only the state department of administration may procure insurance under this act except as otherwise provided herein.

All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities and other instrumentalities of the state hereafter called state participants shall comply with this act and the insurance plan developed by the department of administration.

History: En. Sec. 4, Ch. 380, L. 1973.

82-4305. Apportionment of costs—creation of deductible reserve. (1) The department of administration shall apportion the costs of all insurance purchased under this chapter to the individual state participants, and the costs shall be paid to the department subject to appropriations by the legislature.

(2) The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan, until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish such deductible reserves.

(3) The department of administration may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion, the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

History: En. Sec. 5, Ch. 380, L. 1973; amd. Sec. 2, Ch. 360, L. 1977.

Amendments

The 1977 amendment added "subject to appropriations by the legislature" to subsection (1); substituted "deductible reserve" in the first sentence of subsection

(2) for "reserve in the amount of two hundred fifty thousand dollars, the amount of the total annual aggregate deductible" inserted "deductible" before "reserves" at the end of subsection (2); added subsections (3) and (4); and made minor changes in phraseology, punctuation and style.

82-4306. Political subdivisions. (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund.

History: En. Sec. 6, Ch. 380, L. 1973; amd. Sec. 3, Ch. 360, L. 1977.

made minor changes in phraseology and style.

Amendments

The 1977 amendment substituted "separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part" at the end of subsection (1) for "under this act"; added subsections (2) through (4); and

Liability of Political Subdivisions

This section, along with 82-4309, 82-4318 and 82-4326, together manifest a legislative intent that political subdivisions should be responsible for the torts of their employees, to the exclusion of any liability on the part of the state. *State v. District Court*, — M —, 550 P 2d 382.

82-4307. Repealed.

Repeal

Section 82-4307 (Sec. 7, Ch. 380, L. 1973), relating to the required limits of

coverage, was repealed by Sec. 2, Ch. 143, Laws of 1974.

82-4308. Conditions construed in compliance with act—customary exclusions. Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this act, which contains any condition or provision not in compliance with the requirements of this act, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this act, provided the policy is otherwise valid. This section shall not be construed to prohibit any such insurance policy, rider or endorsements from containing standard and customary exclusions of coverages which the department of administration deems to be reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973.

82-4309. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, all political subdivisions may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose.

History: En. Sec. 9, Ch. 380, L. 1973; amd. Sec. 4, Ch. 360, L. 1977.

Amendments

The 1977 amendment inserted "deductible reserve fund, and self-insurance reserve fund"; and made minor changes in phraseology and punctuation.

Liability of Political Subdivisions

This section, along with 82-4306, 82-4318 and 82-4326, together manifest a legislative intent that political subdivisions should be responsible for the torts of their employees, to the exclusion of any liability on the part of the state. *State v. District Court*, — M —, 550 P 2d 382.

82-4310. Governmental entities liable for torts except as specifically provided by the legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18 of The Constitution of the State of Montana.

History: En. Sec. 10, Ch. 380, L. 1973; amd. Sec. 1, Ch. 189, L. 1977.

Amendments

The 1977 amendment added the exception.

Police

A city is liable for the torts of its policemen committed in an official capacity by virtue of this section, which overrules *Boettger v. Employers Liability Assurance Corp.*, 158 M 258, 490 P 2d 717. *State v. District Court*, — M —, 550 P 2d 382.

82-4311. Filing of claims against state—time of filing. All claims against the state arising under the provisions of this act shall be presented to and filed with the department of administration.

History: En. Sec. 11, Ch. 380, L. 1973; amd. Sec. 1, Ch. 361, L. 1975; amd. Sec. 5, Ch. 360, L. 1977.

Amendments

The 1975 amendment added the second sentence.

The 1977 amendment substituted "department of administration" for "secretary of state"; deleted "within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later" from the end of the first sentence; and

deleted a second sentence which read "A fee of ten dollars (\$10) shall be paid to the secretary of state at the time the claim is presented for filing."

Constitutionality

This section is unconstitutional since it creates a condition precedent to governmental waiver of immunity, in conflict with article II, section 18 of the 1972 Montana constitution; the correct statute of limitations for tort actions against governmental entities is 82-4317, R. C. M. 1947. *Noll v. City of Bozeman*, — M —, 534 P 2d 880.

82-4312. Filing of claims against political subdivisions—time for filing. All claims against a political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision.

History: En. Sec. 12, Ch. 380, L. 1973; amd. Sec. 6, Ch. 360, L. 1977.

Amendments

The 1977 amendment deleted "within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later" from the end of the section.

Actual Knowledge

Although plaintiff had not filed formal claim against city within the time limit prescribed, issues of fact as to the fact and extent of knowledge by city that plaintiff was injured precluded summary judgment. *State ex rel. City of Bozeman v. District Court*, — M —, 531 P 2d 1343.

82-4312.1. Limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

History: En. 82-4312.1 by Sec. 7, Ch. 360, L. 1977.

Title of Act

An act to authorize establishment of self-insurance programs for state and local governmental entities with certain guidelines; to clarify the means by which claims against governmental entities may

be settled; to clarify the means by which judgments against governmental entities may be satisfied; amending sections 82-4303, 82-4305, 82-4306, 82-4309, 82-4311, 82-4312, 82-4318, and 82-4319, R. C. M. 1947; and repealing sections 82-4313 through 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and 83-707, R. C. M. 1947.

82-4313 to 82-4316. Repealed.

Repeal

Sections 82-4313 to 82-4316 (Secs. 13 to 16, Ch. 380, L. 1973), relating to filing

of claims against political subdivisions, were repealed by Sec. 12, Ch. 360, Laws 1977.

82-4316.1. Court approval of attorney's fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorney's fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this section, he forfeits the right to any fee which he may have collected or been entitled to collect.

History: En. 82-4316.1 by Sec. 1, Ch. 188, L. 1977.

Title of Act

An act to provide for approval of attorney fees in connection with claims against governmental entities.

82-4317. Repealed.

Repeal

Section 82-4317 (Sec. 17, Ch. 380, L. 1973), relating to limitation of actions on

claims against a governmental entity, was repealed by Sec. 12, Ch. 360, Laws 1977.

82-4318. Compromise or settlement of claim against political subdivision. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any. A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed.

History: En. Sec. 18, Ch. 380, L. 1973;
amd. Sec. 8, Ch. 360, L. 1977.

Amendments

The 1977 amendment added the last sentence.

Liability of Political Subdivisions

This section, along with 82-4306, 82-4309 and 82-4326, together manifest a legislative intent that political subdivisions should be responsible for the torts of their employees, to the exclusion of any liability on the part of the state. State v. District Court, — M —, 550 P 2d 382.

82-4319. Compromise or settlement of claim against state. The department of administration may compromise and settle any claim allowed by this act, subject to the terms of insurance, if any. A settlement involving the self-insurance reserve fund or deductible reserve fund must be approved by the district court of Lewis and Clark County.

History: En. Sec. 19, Ch. 380, L. 1973;
amd. Sec. 9, Ch. 360, L. 1977.

Amendments

The 1977 amendment added the last sentence.

82-4320. Jurisdiction of district court—rules of procedure. The district court shall have jurisdiction over any action brought under this act and such actions shall be governed by the Montana Rules of Civil Procedure in so far as they are consistent with this act.

History: En. Sec. 20, Ch. 380, L. 1973.

82-4321. Venue of actions. Actions against the state shall be brought in the county in which the cause of action arose or in Lewis and Clark County. In addition, a resident of the state of Montana may bring an action in the county of his residence.

Actions against a political subdivision shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.

History: En. Sec. 21, Ch. 380, L. 1973.

82-4322. Service of summons on state. In all actions against the state, the state shall be named the defendant, and the summons shall be served on the secretary of state.

History: En. Sec. 22, Ch. 380, L. 1973.

82-4322.1. Legislative purpose. It is the purpose of this act to provide for the immunization and indemnification of public officers and employees sued for their actions, other than intentional tort or felonious acts, taken within the course and scope of their employment.

History: En. 82-4322.1 by Sec. 1, Ch. 239, L. 1974.

Title of Act

An act to amend section 82-4323, R. C. M. 1947, to provide that a governmental entity employer must be joined as party

defendant in certain actions; providing immunity from personal liability or from suit for governmental entity employees in certain cases; providing for indemnity in certain cases; and providing an effective date.

82-4323. Governmental entity to be joined as defendant—employees immune from personal liability or from suit in certain cases—recovery against governmental entity bar to recovery against employee—indemnity. (1) In

an action brought against any employee of a state, county, city, town or other governmental entity for a negligent act, error or omission, or other actionable conduct of the employee committed while acting within the course and scope of his office or employment, the governmental entity employer shall be made a party defendant to the action.

(2) Recovery against a governmental entity under the provisions of this act shall constitute a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, or omission or other actionable conduct gave rise to the claim. In any such action against a governmental entity, the employee whose conduct gave rise to the suit shall be immune from suit by reasons of the same subject matter, if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of such employee's employment, unless the claim is based upon an intentional tort or felonious act of the employee.

(3) In any action in which a governmental entity employee is a party defendant, the employee shall be indemnified by the governmental entity employer for any money judgments or legal expenses to which he may be subject as a result of the suit unless the conduct upon which the claim is brought did not arise out of the course and scope of his employment or is an intentional tort or felonious act of the employee.

History: En. Sec. 23, Ch. 380, L. 1973; amd. Sec. 2, Ch. 239, L. 1974.

the end of the first sentence of subsection (2); added the second sentence of subsection (2); and added subsection (3).

Amendments

The 1974 amendment inserted subsection (1); inserted "or recovery of damages" in the first sentence of subsection (2) after "any action"; inserted "error" and "or other actionable conduct" near

Effective Date

Section 3 of Ch. 239, Laws of 1974 provided the act should be in effect from and after its passage and approval. Approved March 21, 1974.

82-4324. Punitive damages, attorney fees, interest. Governmental entities shall not be liable for punitive damages, attorney fees or interest on any claim allowed under the provisions of this act.

History: En. Sec. 24, Ch. 380, L. 1973.

82-4325. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of this act, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973.

Separability Clause

Section 27 of Ch. 380, Laws 1973 read "The provisions of this act are hereby declared to be severable and if any provision

of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

82-4326. Repealed.

Repeal

Section 82-4326 (Sec. 26, Ch. 380, L. 1973), relating to tax levy to pay claims

against a governmental entity, was repealed by Sec. 12, Ch. 360, Laws 1977.

82-4327. Attachment, execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under this act.

History: En. Sec. 28, Ch. 380, L. 1973.

82-4328. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

History: En. 82-4328 by Sec. 2, Ch. 189, L. 1977.

Title of Act

An act to specifically provide the state, counties, towns, and all other local government entities and the officers, agents,

and employees of those entities immunity from suit for injury to a person or property in certain cases in accordance with the provisions of Article II, section 18 of the constitution of the state of Montana; amending section 82-4310, R. C. M. 1947.

82-4329. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

History: En. 82-4329 by Sec. 3, Ch. 189, L. 1977.

82-4330. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

History: En. 82-4330 by Sec. 4, Ch. 189, L. 1977.

82-4331. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof

are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

History: En. 82-4331 by Sec. 5, Ch. 189,
L. 1977.

82-4332. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

History: En. 82-4332 by Sec. 6, Ch. 189,
L. 1977.

82-4333. Actions under invalid law or rule—same as if valid—when.

(1) If an officer, agent, or employee of the state or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents, nor the governmental entity he represents, is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental unit he represents, nor the governmental entity he represents, is civilly liable in any action in which no liability would attach had the rule or ordinance been valid.

History: En. 82-4333 by Sec. 7, Ch. 189,
L. 1977.

82-4334. Limitation on governmental liability for damages in tort—petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages; or

(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$300,000 for each claimant and \$1 million for each occurrence.

(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for noneconomic damages or economic damages in excess of the sum authorized in subsection (1)(b) of this section, or both, upon petition of plaintiff following a final judgment. No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance.

(3) As used in this section:

(a) "economic damages" means tangible pecuniary losses;

(b) "noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation.

History: En. Sec. 82-4334 by Sec. 8, Ch. 189, L. 1977.

Separability Clause

Section 9 of Ch. 189 read "If a part of this act is invalid, all valid parts that are

severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

82-4335. Judgments against governmental entities except state—how satisfied. (1) A political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(a) insurance;

(b) the general fund or any other funds legally available to the governing body;

(c) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(d) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

(2) If a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

History: En. 82-4335 by Sec. 10, Ch. 360, L. 1977.

Separability Clause

Section 11 of Ch. 360, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its appli-

cations, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 360, Laws 1977 read "Sections 82-4313 through 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and 83-707, R. C. M. 1947, are repealed."

CHAPTER 44—WESTERN INTERSTATE NUCLEAR COMPACT

Section

82-4401. Western interstate nuclear compact adopted—text.

82-4402. Board member appointed by governor—compensation.

82-4403. Bylaws and amendments filed with secretary of state.

82-4401. Western interstate nuclear compact adopted—text. The western interstate nuclear compact is entered into and adopted as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

ARTICLE I.

Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a co-operative basis. It is the policy of the party states to undertake such co-operation on a continuing basis. It is the purpose of this compact to provide the instruments and framework for such a co-operative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

ARTICLE II.

The Board

(a) There is hereby created an agency of the party states to be known as the "western interstate nuclear board," hereinafter called the board. The board shall be composed of one (1) member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party states shall each be entitled to one (1) vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for

the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

ARTICLE III.

Finances

(a) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under article II, paragraph (h) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under article II, paragraph (h) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board, and duly designated representatives of governments contributing to the board's support.

ARTICLE IV.

Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may co-operate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V.

Powers

The board shall have power to:

(a) Encourage and promote co-operation among the party states in

the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or co-operate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and co-operate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the west.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states of their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and

under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(l) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

(n) Co-operate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one (1) or more other powers conferred upon the board by this compact.

(p) Prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to co-ordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall co-ordinate requests for aid pursuant to article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

The plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

From time to time, the board shall analyze the information gathered from reports of aid pursuant to article VI and such other instances of

mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such co-operative programs of the federal government as are useful in connection with the fields covered by this compact.

ARTICLE VI.

Mutual Aid

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII.

Supplementary Agreements

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of article V of this compact, any two (2) or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions to this article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake co-operative arrangements or projects.

ARTICLE VIII.

Other Laws and Relations

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

ARTICLE IX.

Eligible Parties, Entry Into Force and Withdrawal

(a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, provided, that it shall not become initially effective until enacted into law by five (5) states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two (2) years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall effect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. Such participation shall not include the furnishing or receipt of mutual aid pursuant to article VI, unless that article has been enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

ARTICLE X.

Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: En. Sec. 1, Ch. 258, L. 1973. **Title of Act**

An act adopting the Western interstate nuclear compact.

82-4402. Board member appointed by governor—compensation. The governor shall appoint the board member. He shall report directly to the governor. The member, with the approval of the governor, may designate an alternate to represent the state when he is unable to do so. The member or his alternate may receive no compensation in addition to salary for his services as a member of the board but shall be reimbursed for travel expenses as provided for in 59-538, 59-539, and 59-801, as amended, incurred in the performance of his duties.

History: En. Sec. 2, Ch. 258, L. 1973; amd. Sec. 21, Ch. 453, L. 1977.

Amendments

The 1977 amendment substituted "travel

expenses as provided for in 59-538, 59-539, and 58-801, as amended" near the end of the last sentence for "actual and necessary expenses"; and made minor changes in phraseology and punctuation.

82-4403. Bylaws and amendments filed with secretary of state. Pursuant to article II, paragraph (j) of the compact, the western interstate nuclear board shall file copies of the bylaws and amendments thereto with the secretary of state.

History: En. Sec. 3, Ch. 258, L. 1973.

CHAPTER 45—DEPARTMENT OF COMMUNITY AFFAIRS—AUDIT DUTIES

Section

- 82-4515. Definition.
- 82-4516. Audit duties of department.
- 82-4517. Audit purpose.
- 82-4518. Audit scope.
- 82-4519. Audit exit review conference.
- 82-4520. Audit reports content.
- 82-4521. Audit reports—issuance and filing.
- 82-4522. Audit report—reply by governing bodies.
- 82-4523. Audit report—publication.
- 82-4524. Audit fees.
- 82-4525. Audit by independent accountant/auditor.
- 82-4526. Access to public accounts—actions to compel.
- 82-4527. Duty of officers to aid in audit.
- 82-4528. Power to examine books and papers.
- 82-4529. Special audits.
- 82-4530. Accounting methods.

82-4501 to 82-4514. Repealed.

Repeal

Sections 82-4501 to 82-4514 (Secs. 88 to 101, Ch. 348, L. 1974; amd. Sec. 48, Ch.

213, L. 1975), concerning audit duties of the department of community affairs, were repealed by Sec. 18, Ch. 380, L. 1975.

82-4515. Definition. Unless the context requires otherwise, in this chapter "department" means the department of community affairs.

History: En. 82-4515 by Sec. 1, Ch. 380, L. 1975.

Title of Act

An act to recodify the examination duties of the department of community affairs; revising present language and add-

ing sections to clarify the audit process; providing for audits by licensed public accountants or firms of public accountants; amending section 75-6323, R. C. M. 1947; repealing sections 82-4501 through 82-4514, R. C. M. 1947; and providing a delayed effective date.

82-4516. Audit duties of department. (1) The department shall audit the affairs of all:

- (a) counties;
- (b) incorporated cities and towns;
- (c) school districts;
- (d) school district extracurricular fund for pupil functions;
- (e) irrigation districts;
- (f) conservancy districts;
- (g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy;
- (h) fire department relief associations.

(2) Each audit shall be made annually and shall cover the immediately preceding fiscal year of the governmental entity.

(3) Each annual audit shall be initiated not later than twelve (12) months from the close of the fiscal year for which the audit is conducted.

(4) In lieu of the annual audits required by the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such annual audits with a public accountant or firm of public accountants who are licensed under the laws of Montana.

History: En. 82-4516 by Sec. 2, Ch. 380,
L. 1975.

82-4517. Audit purpose. The purpose of the audit of the affairs of the governmental entities as set forth in this chapter shall be to ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished; that the financial condition and operations of the entities are reasonably conducted and reported; that the stewardship of such entities is conducted in such a manner as to preserve and protect the public trust and to accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public.

History: En. 82-4517 by Sec. 3, Ch. 380,
L. 1975.

82-4518. Audit scope. Each annual audit shall be a comprehensive audit of the affairs of the governmental entity, including comment on the balance sheet, results of operations, compliance with state statutes and regulations, recommendations for improvement, and any other comments deemed pertinent by the auditor, and including his expression of opinion as to the adequacy of the financial presentations. Each such annual audit required shall be made in accordance with generally accepted governmental auditing standards.

History: En. 82-4518 by Sec. 4, Ch. 380,
L. 1975.

82-4519. Audit exit review conference. Upon completion of the field work of each audit, the in-charge auditor is required to hold with the appropriate officials an exit review conference in which the audit results shall be discussed.

History: En. 82-4519 by Sec. 5, Ch. 380,
L. 1975.

82-4520. Audit reports content. The audit reports shall contain but are not limited to the following:

(1) financial statements that conform with the generally accepted governmental accounting principles and which, in so far as possible, present the financial position and results of financial operations for each fund of the governmental entity;

(2) an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed; when an over-all opinion cannot be expressed, the reasons therefor should be stated;

(3) a statement that previously noted deficiencies or recommendations contained in previous audit reports have been acted upon by adoption as recommended, adoption with modification, or rejection; and

(4) disclosure of any lack of compliance with state statutes or regulations, as well as any operating deficiencies or recommendations for improvement.

History: En. 82-4520 by Sec. 6, Ch. 380,
L. 1975.

82-4521. Audit reports—issuance and filing. (1) Within sixty (60) days after the completion of the field work, the department shall issue audit reports as follows:

(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;

(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;

(c) school district audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the clerk of the school district;

(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;

(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;

(f) conservancy district audit reports to the board of directors, the state department of natural resources and conservation, the district court, and the county attorney(s);

(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk; and

(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s);

(2) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee or board, the officer, employee or board must be proceeded against by the attorney general or county, city or town attorney as provided by law. The county, city or town at-

torney shall report to the department within thirty (30) days after receiving the audit report from the department, the proceedings instituted or to be instituted relating to the violations of law and nonperformance of duty. If the county, city or town attorney fails or refuses to prosecute the case, the department may employ an attorney to prosecute the case at the expense of the respective governmental entity.

(3) All audit reports issued by the department are to be maintained on file at an appropriate location and open to public inspection.

History: En. 82-4521 by Sec. 7, Ch. 380,
L. 1975.

82-4522. Audit report—reply by governing bodies. (1) Upon receipt of the audit report the governing bodies of each audited entity shall review the contents, and within thirty (30) days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification shall not be required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

History: En. 82-4522 by Sec. 8, Ch. 380,
L. 1975.

82-4523. Audit report—publication. After the expiration of the thirty (30) day period provided for in section 82-4522, the department shall send a copy of the general comments section of each annual audit report to a newspaper of general circulation for publication. However, the general comments section of each annual county audit report shall be sent to the official newspaper of the county for publication. The publication shall include a statement to the effect that the audit report is on file in its entirety and open to public inspection. Publication costs shall be borne by the audited governmental entity.

History: En. 82-4523 by Sec. 9, Ch. 380,
L. 1975.

82-4524. Audit fees. The department shall charge audit fees based upon the costs incurred by the department in the conduct of each annual audit, except as follows:

(a) For each annual audit of fire department relief associations, the department shall charge audit fees on the basis of the funds of the association:

(i) if the fund is more than one thousand dollars (\$1,000) and less than five thousand dollars (\$5,000), the annual audit fee shall be ten dollars (\$10);

(ii) if the fund is from five thousand dollars (\$5,000) to ten thousand dollars (\$10,000), the annual audit fee shall be twenty-five dollars (\$25);

(iii) if the fund is more than ten thousand dollars (\$10,000), the annual audit fee shall be thirty-five dollars (\$35).

(b) For each annual audit of fire districts and volunteer fire departments, the department shall charge audit fees of seven dollars and fifty cents (\$7.50) an hour for each person engaged in the audit.

(c) For each annual audit of irrigation districts, the department shall charge audit fees of seventy dollars (\$70) a day for each person engaged in the audit.

(d) For each annual audit of conservancy districts, the department shall charge audit fees of seventy dollars (\$70) a day for each person engaged in the audit.

All audit fees herein provided shall be paid by the governmental entity to the state treasurer and credited to the state general fund.

History: En. 82-4524 by Sec. 10, Ch. 380, L. 1975.

82-4525. Audit by independent accountant/auditor. (1) In lieu of the annual audits required of the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such annual audits with a public accountant or firm of public accountants who are licensed under the laws of Montana.

(2) The department shall establish rules governing the administration of the contracts between the department, the independent accountant/auditor, and the governmental entities. These rules and regulations shall include, but not be limited to:

- (a) establishment of criteria for the selection of the independent accountant/auditor;
- (b) contract form and content; and
- (c) standards of audit and reporting.

History: En. 82-4525 by Sec. 11, Ch. 380, L. 1975.

82-4526. Access to public accounts—actions to compel. (1) The department may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts it is examining under law. If an officer of any county, city, town, school, or other governmental entity referred to in this act, refuses to accord the department access during an audit of the officer's accounts to his cash, bank accounts, or any of the papers, vouchers or records of his office, or, if the department finds a shortage of cash, the department shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage, with the respective county, city or town attorney and the governing body of the governmental entity.

Upon filing of the statement, the officer shall immediately be suspended from the duties and emoluments of his office, and the governing body of such governmental entity shall appoint some qualified person to the office, pending completion of the audit.

(2) Upon the completion of the audit by the department, if a shortage of cash existed in the accounts of the officer, the department shall file with the governing body of the governmental entity a final report of the

audit, showing the shortage. The right of the officer to the office is then forfeited, and the office becomes vacant as of the date of the suspension of the officer. The person appointed to the office upon the suspension of the officer shall hold the office until the election and qualification of his successor, as provided by law.

(3) An officer whose right to office has been forfeited may, within ten (10) days after the filing of the department's final report or audit, begin in the district court of the proper judicial district a proceeding in quo warranto to test the right of his successor to hold the office, and to test the accuracy of the final report and audit of the department.

History: En. 82-4526 by Sec. 12, Ch.
380, L. 1975.

82-4527. Duty of officers to aid in audit. The officers and employees of the governmental entities referred to in this act shall afford all reasonable facilities for the department's audit and shall furnish information to the department under oath in a manner prescribed by the department.

History: En. 82-4527 by Sec. 13, Ch.
380, L. 1975.

82-4528. Power to examine books and papers. The department may examine any books, papers, accounts and documents in the office or possession of any governmental entity referred to in this act, and may send for persons or papers and examine under oath any person concerning them.

History: En. 82-4528 by Sec. 14, Ch.
380, L. 1975.

82-4529. Special audits. (1) In addition to the annual audits required by section 82-4516, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this act.

(2) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee herein provided shall be paid by the governmental entity to the state treasurer and credited to the state general fund.

History: En. 82-4529 by Sec. 15, Ch.
380, L. 1975.

82-4530. Accounting methods. The department shall prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to governmental entities referred to in this act, and shall establish in those offices general methods and details of accounting. All governmental entity officers shall conform with the standards prescribed by the department.

History: En. 82-4530 by Sec. 16, Ch.
380, L. 1975.

CHAPTER 46—LEGISLATIVE REVIEW OF REGULATORY AGENCIES

Section

- 82-4601. Purpose.
- 82-4602. Definitions.
- 82-4603. Agencies to terminate.
- 82-4604. Legislative audit committee review.
- 82-4605. Prereview agency responsibilities.
- 82-4606. Hearings by standing committee—criteria for termination.
- 82-4607. Effect of termination.
- 82-4608. Reestablishment.
- 82-4609. Future regulatory agencies subject to act.

82-4601. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

(c) No profession, occupation, business, industry, or other endeavor are subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function which licenses or otherwise regulates a profession, occupation, business, industry, or other endeavor by a periodic review and termination, modification, or reestablishment of such programs and functions.

History: En. 82-4601 by Sec. 1, Ch. 562, L. 1977.

Title of Act

An act relating to legislative review of agencies which regulate a profession, oc-

cupation, business, industry, or other endeavor; providing for abolishment of agencies; and providing for periodic legislative review, modification, and reestablishment of agencies.

82-4602. Definitions. As used in this act, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency with special regard to the duplication of efforts between the audited agency and other agencies, and the quality of service being rendered.

History: En. 82-4602 by Sec. 2, Ch. 562,
L. 1977.

82-4603. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 82A-1602.1;

(b) board of public accountants, department of professional and occupational licensing, created by 82A-1602.2;

(c) board of architects, department of professional and occupational licensing, created by 82A-1602.3;

(d) state banking board, department of business regulation, created by 82A-407;

(e) state electrical board, department of professional and occupational licensing, created by 82A-1602.10;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 82A-1602.11;

(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 40-2701 and 40-2702;

(h) office of the investment commissioner, state auditor's office, created by 13-2001;

(i) board of landscape architects, department of professional and occupational licensing, created by 82A-1602.30;

(j) board of county printing, department of community affairs, created by 82A-904;

(k) board of plumbers, department of professional and occupational licensing, created by 82A-1602.22;

(l) board of real estate, department of professional and occupational licensing, created by 82A-1602.23;

(m) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 82A-1602.29;

(n) board of institutions, department of institutions, created by 82A-806.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 82A-1015;

(b) board of athletics, department of professional and occupational licensing, created by 82A-1602.4;

(c) board of barbers, department of professional and occupational licensing, created by 82A-1602.5;

(d) board of chiropractors, department of professional and occupational licensing, created by 82A-1602.7;

(e) board of cosmetologists, department of professional and occupational licensing, created by 82A-1602.8;

(f) board of dentists, department of professional and occupational licensing, created by 82A-1602.9;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 82A-1602.12;

(h) board of massage therapists, department of professional and occupational licensing, created by 82A-1602.14;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 82A-1602.15;

(j) board of morticians, department of professional and occupational licensing, created by 82A-1602.16;

(k) board of nursing, department of professional and occupational licensing, created by 82A-1602.18;

(l) board of nursing home administrators, department of professional and occupational licensing, created by 82A-1602.17;

(m) board of optometrists, department of professional and occupational licensing, created by 82A-1602.19;

(n) board of osteopathic physicians, department of professional and occupational licensing, created by 82A-1602.20;

(o) board of pharmacists, department of professional and occupational licensing, created by 82A-1602.21;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 82A-1602.6;

(q) board of psychologists, department of professional and occupational licensing, created by 82A-1602.27;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 82A-1602.28;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 82A-1602.31;

(t) board of veterinarians, department of professional and occupational licensing, created by 82A-1602.24;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 82A-1905.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 82A-905;

(b) state board of hail insurance, department of agriculture, created by 82-1501;

(c) board of horse racing, department of professional and occupational licensing, created by 82A-1602.13;

(d) board of livestock, department of livestock, created by 82A-1303;

(e) board of milk control, department of business regulation, created by 82A-406;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 82A-1508;

(g) Montana outfitters council, department of fish and game, created by 82A-2005;

(h) public service commission, department of public service regulation, created by 70-101;

(i) board of sanitarians, department of professional and occupational licensing, created by 69-3412;

(j) board of water and waste water operators, department of health and environmental sciences, created by 82A-612;

(k) board of water well contractors, department of professional and occupational licensing, created by 82A-1602.26.

History: En. Sec. 82-4603 by Sec. 3, Ch. 562, L. 1977.

82-4604. Legislative audit committee review. (1) The legislative audit committee is responsible for having conducted a review of each agency scheduled for termination by 82-4603. The review shall be completed at least 6 months prior to the date set for termination.

(2) The review conducted shall include a performance audit of the agency and a thorough examination of the following:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?

(c) Is there another less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of and have as their primary effect the protection of the public?

(3) The legislative audit committee shall assist in the implementation of the provisions of this act and shall establish administrative procedures which facilitate the review and evaluation as required in this act.

(4) Upon completion of its review, the legislative audit committee shall make a report of its recommendations for continuation, modification, or termination and submit a proposed bill for the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes for which the agency reviewed is responsible.

History: En. 82-4604 by Sec. 4, Ch. 562, L. 1977.

82-4605. Prereview agency responsibilities. An agency designated by 82-4603 or 82-4609 for termination shall by 22 months preceding the date set for termination:

(1) delineate goals of programs for which they are responsible, which

goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) delineate objectives of programs and layout clearly enough to be tested, the logic in the assumptions linking expenditures to outcome anticipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals.

History: En. 82-4605 by Sec. 5, Ch. 562,
L. 1977.

82-4606. Hearings by standing committee—criteria for termination.

(1) Prior to abolishment of an agency terminated by 82-4603 or 82-4609, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination is recommended by the legislative audit committee, the agency has the burden of demonstrating a public need for its continued existence and the extent to which a change in the composition, structure, and operation of the agency would increase the protection of the public health, safety, or welfare from harm or damage or decrease the adverse effect on the competitive market.

(3) In determining whether to reestablish an agency, the legislature shall consider the performance audit and review conducted by the legislative audit committee, the public testimony responsive to the questions set forth in subsection (2) of 82-4604, and other matters considered relevant by the committee.

History: En. 82-4606 by Sec. 6, Ch. 562,
L. 1977.

82-4607. Effect of termination. Upon termination each agency or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency except that no action may be taken which would continue in effect beyond the 1 year windup period. Upon the expiration of the 1 year after termination, each agency not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund.

History: En. 82-4607 by Sec. 7, Ch. 562,
L. 1977.

82-4608. Reestablishment. (1) Any agency scheduled for termination under this act or any subsequent act may be reestablished by the legislature for any period of time specified by law, not to exceed 6 years, at the end of which time the legislature shall again review the agency pursuant to 82-4604 and may again reestablish, modify, or allow the termination of the agency pursuant to this section.

(2) No more than one agency may be continued or reestablished in any bill for an act, and the agency shall be mentioned in the bill's title.

History: En. 82-4608 by Sec. 8, Ch. 562,
L. 1977.

82-4609. Future regulatory agencies subject to act. Any agency or program created in part to regulate any profession, occupation, business, or other endeavor by law enacted after January 1, 1977, shall terminate on July 1 of the year of the third regular biennial legislative session following enactment of such law. Any such agency or program shall be reviewed as required in 82-4604 through 82-4608, and such review shall be completed prior to the convening of the third regular biennial legislative session following enactment of such law.

History: En. 82-4609 by Sec. 9, Ch. 562,
L. 1977.

Saving Clause

Section 10 of Ch. 562, Laws 1977 read "This act shall not affect the right to institute or prosecute any cause of action by or against an agency terminated pursuant to this act if the cause of action accrued prior to the date the agency was terminated. Any causes of action pending on the date the agency is terminated, or instituted thereafter, shall be prosecuted or

detended in the name of the state by the department of justice."

Separability Clause

Section 11 of Ch. 562, Laws 1977 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 82A—STATE REORGANIZATION OF EXECUTIVE BRANCH

Chapter

1. General provisions, 82A-101 to 82A-112, 82A-115 to 82A-122.
2. Department of administration, 82A-201, 82A-201.1, 82A-204, 82A-206, 82A-207, 82A-210, 82A-212, 82A-214 to 82A-216, 82A-218 to 82A-221, 82A-224, 82A-225.
3. Department of agriculture, 82A-301, 82A-301.1, 82A-304, 82A-304.1.
4. Department of business regulation, 82A-401, 82A-401.1, 82A-404, 82A-406, 82A-407.
5. State board of education, 82A-501, 82A-501.1, 82A-501.2, 82A-502, 82A-507 to 82A-509, 82A-512, 82A-513.
6. Department of health and environmental sciences, 82A-601, 82A-601.1, 82A-604 to 82A-608, 82A-610, 82A-612 to 82A-620.
7. Department of highways, 82A-701, 82A-701.1, 82A-706.1, 82A-709.
8. Department of institutions, 82A-801, 82A-801.1, 82A-804 to 82A-806.
9. Department of community affairs, 82A-901, 82A-901.1, 82A-904, 82A-905.
10. Department of labor and industry, 82A-1001 to 82A-1011, 82A-1014 to 82A-1016.
11. Department of state lands, 82A-1101, 82A-1101.1, 82A-1104.
12. Department of justice, 82A-1201 to 82A-1207, 82A-1209.
13. Department of livestock, 82A-1301, 82A-1301.1, 82A-1303, 82A-1303.1, 82A-1306.
14. Department of military affairs, 82A-1401, 82A-1405, 82A-1406.
15. Department of natural resources and conservation, 82A-1501, 82A-1501.1, 82A-1508, 82A-1509.
16. Department of professional and occupational licensing, 82A-1601 to 82A-1602.24, 82A-1602.26 to 82A-1602.31, 82A-1603 to 82A-1607.
17. Department of public service regulation, 82A-1701, 82A-1702, 82A-1704 to 82A-1706.
18. Department of revenue, 82A-1801 to 82A-1804, 82A-1806 to 82A-1808.
19. Department of social and rehabilitation services, 82A-1901, 82A-1901.1, 82A-1905, 82A-1906.
20. Department of fish and game, 82A-2001, 82A-2001.1, 82A-2004, 82A-2005.
21. Miscellaneous transfers, 82A-2102.

CHAPTER 1—GENERAL PROVISIONS

Section

- 82A-101. Short title.
- 82A-102. Declaration of policy and purpose.
- 82A-103. Definitions.
- 82A-104. Structure of executive branch of state government.
- 82A-105. Policy-making authority and administrative powers of governor.
- 82A-106. Appointment and qualifications of department heads.
- 82A-107. Duties and powers of department heads.
- 82A-108. Allocation for administrative purposes only.
- 82A-109. Prior right of department head to agencies and records.
- 82A-110. Creation of advisory councils.
- 82A-111. Administratively created agencies—prohibition.
- 82A-112. Quasi-judicial boards.
- 82A-115. Future agencies and functions.
- 82A-116. Rights of state personnel.
- 82A-117. Rights to property.
- 82A-118. Rules, regulations, and orders.
- 82A-119. Legal proceedings.
- 82A-120. Rights and duties under existing transactions.
- 82A-121. References.
- 82A-122. Federal aid.

82A-101. Short title. This title shall be known and may be cited as the "Executive Reorganization Act."

History: En. 82A-101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 358, L. 1973.

Title of Act

An act to reorganize the executive department of Montana state government in accordance with the constitutional amendment, chapter 1 of the extraordinary session, Laws of Montana, 1969, adopted at the general election of November 3, 1970, and effective under the governor's proclamation, November 20, 1970, which provides that: 'All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government

and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973.'; and repealing sections 27-427, 59-901, and 59-902, R. C. M., 1947.

Amendments

The 1973 amendment substituted "title" for "act"; and deleted "of 1971" from the end of the short title.

82A-102. Declaration of policy and purpose. (1) The purpose of this title is to comply with article VI, section 7, of the Montana constitution which requires that all executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than twenty (20) principal departments so as to provide an orderly arrangement in the administrative organization of state government.

(2) It is the public policy of this state and the purpose of this title to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive branch of state government for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive branch of state government.

History: En. 82A-102 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" throughout the section; substituted "executive branch" for "executive department" throughout the section; substituted the reference to the 1972 constitution in subsection (1) for a reference to the 1970 constitutional amendment; inserted "bureaus" in subsection (1); deleted the state treasurer and state auditor from the list of officers excepted

from the operation of subsection (1); deleted "by no later than July 1, 1973" at the end of subsection (1); added "so as to provide an orderly arrangement in the administrative organization of state government" at the end of subsection (1); deleted subsections (3) and (4), which declared the legislative intent to change functions with the least possible disruption of service and the least expense, and the intent not to change statutory functions unless specifically expressed; and made minor changes in phraseology and style.

82A-103. Definitions. As used in this title:

(1) "Executive branch" means the executive branch of state government referred to in the Montana constitution, articles III and VI.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or department, and an agency allocated to a department for administrative purposes only by this title.

(4) "Department" means a principal functional and administrative entity, created by this title, within the executive branch of state government; is one of the twenty (20) principal departments permitted under the constitution; and includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this title.

(6) "Director" means a department head specifically referred to as a director in this title, and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements, and does not mean administering a program or function or setting policy.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(10) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

History: En. 82A-103 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 3, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" throughout the section; substituted "executive branch" for "executive department" throughout the section; changed the reference at the end of subdivision (1) so as to refer to the appropriate articles of the 1972 constitution; deleted subdivision (2) defining "re-

organization amendment" and subdivision (12) defining "investment function"; re-numbered subdivisions (3) to (11) as (2) to (10); deleted "or transferred" following "allocated" in subdivision (3); deleted "Except when used in connection with the name of an agency existing before the effective date of the applicable chapter of this act" from the beginning of subdivision (4); and substituted "constitution" for "reorganization amendment" in subdivision (4).

82A-104. Structure of executive branch of state government. (1) In accordance with the constitution, all executive and administrative offices,

boards, commissions, agencies, and instrumentalities of the executive branch of state government, and their respective functions, are allocated by this title among and within the following departments or entities:

- (a) Department of administration.
- (b) Department of agriculture.
- (c) Department of business regulation.
- (d) State board of education.
- (e) Department of fish and game.
- (f) Department of health and environmental sciences.
- (g) Department of highways.
- (h) Department of institutions.
- (i) Department of community affairs.
- (j) Department of labor and industry.
- (k) Department of justice.
- (l) Department of livestock.
- (m) Department of military affairs.
- (n) Department of natural resources and conservation.
- (o) Department of professional and occupational licensing.
- (p) Department of public service regulation.
- (q) Department of revenue.
- (r) Department of social and rehabilitation services.
- (s) Department of state lands.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor."

History: En. 82A-104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 250, L. 1973; amd. Sec. 4, Ch. 358, L. 1973; amd. Sec. 2, Ch. 51, L. 1974; amd. Sec. 49, Ch. 213, L. 1975.

Amendments

Chapter 250, Laws of 1973, substituted "justice" for "law enforcement and public safety" in subdivision (k).

Chapter 358, Laws of 1973, substituted "executive branch" for "executive department" and "this title" for "this act" throughout the section; substituted "constitution" for "reorganization amendment" in subsection (1); rearranged the depart-

ments under subsection (1) in alphabetical order; deleted subsection (2) referring to the constitutional offices and preserving their functions; and renumbered subsection (3) as (2).

The 1974 amendment inserted "or entities" after "departments" near the beginning of subdivision (1); and substituted "State board of education" in subdivision (1)(d) for "Department of education."

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" in subdivision (1)(i).

82A-105. Policy-making authority and administrative powers of governor. In accordance with article VI, section 4 of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive branch of state government. In

the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

History: En. 82A-105 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 5, Ch. 358, L. 1973.

as to refer to the 1972 constitution; changed references to the executive department to the executive branch throughout the section; and deleted "state treasurer" following "attorney general" in the third and fourth sentences.

Amendments

The 1973 amendment changed the constitutional reference in the first sentence so

82A-106. Appointment and qualifications of department heads. (1) The governor shall appoint at the beginning of each gubernatorial term each department head who is a director in this title.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law.

History: En. 82A-106 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 358, L. 1973.

beginning of each gubernatorial term" in subsection (1); and substituted "title" for "act" at the end of subsection (1).

Amendments

The 1973 amendment inserted "at the

82A-107. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that he requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department, and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with 82A-104(2).

(h) subject to law and the state merit system, if applicable, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions.

History: En. 82A-107 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 358, L. 1973; amd. Sec. 26, Ch. 285, L. 1977.

Amendments

The 1973 amendment substituted "by law" for "in this act" in the preliminary clause of subsection (1); substituted "title" for "act" in subdivision (1)(a); deleted "state treasurer" from the second

sentence in subdivision (1)(f); inserted "Subject to the approval of the governor" at the beginning of subdivision (1)(g); substituted "by law" for "within this act" in the preliminary clause of subsection (2); deleted "except the power to remove employees of the department and fix their compensation" from the end of subdivision (2)(b); deleted the former subdivision (2)(c) relating to bonds required of em-

ployees; and added subdivisions (2)(c) and (d); and made a minor change in style.

The 1977 amendment added the last two sentences of subdivision (1)(f); and made minor changes in punctuation and style.

82A-108. Allocation for administrative purposes only. (1) An agency allocated to a department for administrative purposes only in this title shall:

(a) Exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.

(b) Submit its budgetary requests through the department.

(c) Submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) Direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency.

(b) Include the agency's budgetary requests in the departmental budget.

(c) Collect all revenues for the agency and deposit them in the proper fund or account; except as provided in section 82A-1603(6), the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) Provide staff for the agency. Unless otherwise indicated in this title, the agency may not hire its own personnel.

(e) Print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this title shall:

(a) Represent the agency in communications with the governor.

(b) Allocate office space to the agency as necessary, subject to the approval of the department of administration.

History: En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973.

inary clauses in subsections (1), (2) and (3); substituted "this title" for "this act" throughout the section; and made a minor change in style.

Amendments

The 1973 amendment deleted "or transferred" after "allocated" in the prelim-

82A-109. Prior right of department head to agencies and records. Each department head designated by this title or appointed by the governor has, before assuming the office of the department head, full access to all agencies and their records within the department created by this title for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department.

History: En. 82A-109 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" in two places.

82A-110. Creation of advisory councils. (1) A department head or the governor may create advisory councils. An official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, or an agency, may also create advisory councils, but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(2) Each advisory council created under this section shall be known as the "_____ advisory council."

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in section 82A-103(7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed twenty-five dollars (\$25) for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for travel expenses as provided for in sections 59-538, 59-539, and 59-801.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor, and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (10) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

- (a) Name, in accordance with subsection (2) of this section.
- (b) Composition.
- (c) Names and addresses of the appointed members.
- (d) Purpose.

(e) Term of existence, in accordance with subsection (11) of this section.

(10) The board of public education, the board of regents of higher education, the state board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(11) An advisory council may not be created to remain in existence longer than two (2) years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor, or by the board of public education, or by the board of regents of higher education, or by the state board of education, or by the attorney general, or by the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (10) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than two (2) years later, when the existence of the advisory council ends, and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

History: En. 82A-110 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 358, L. 1973; amd. Sec. 3, Ch. 51, L. 1974; amd. Sec. 56, Ch. 439, L. 1975.

Amendments

The 1973 amendment substituted "executive branch" for "executive department" in the second sentence of subsection (1); inserted "or of any political subdivision of this state" in both sentences in subsection (5); substituted "is entitled to be paid" or equivalent terminology throughout subsection (5) for "may be paid"; inserted "actual and necessary" before "expenses" near the end of subsection (5); deleted "executive order of" after "unless extended by" in the first sentence of subsection (11); and deleted former subsection

(12) requiring the filing of a one-time report on advisory bodies.

The 1974 amendment substituted "The board of public education, the board of regents of higher education, the state board of education" at the beginning of subdivision (10) for "The board of education"; and substituted "board of public education, or by the board of regents of higher education, or by the state board of education, or by" near the middle of subdivision (11) for "board of education"; and made a minor change in phraseology.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary expenses" in two places in subsection (5); and made a minor change in phraseology.

82A-111. Administratively created agencies—prohibition. The governor, a department head, or any other official of the executive branch of state government, or an agency, may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

(1) Advisory councils created in accordance with section 82A-110.

(2) Units within the internal structure of a department established under section 82A-107(g).

History: En. 82A-111 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "exec-

utive branch" for "executive department" in the preliminary clause; and made minor changes in style.

82A-112. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) (a) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(b) This subsection does not affect the terms of persons who were members of a continued board on the effective date of the chapter of this title continuing the board; upon the expiration of those terms, members shall be appointed and serve in accordance with this subsection.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid \$25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 59-538, 59-539, and 59-801.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

History: En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973; amd. Sec. 57, Ch. 439, L. 1975; amd. Sec. 1, Ch. 186, L. 1977.

Amendments

The 1973 amendment combined former subsection (1) relating to boards created by the 1971 act and former subsection (2) relating to boards continued by the 1971 act; substituted numerical designations for subdivisions that were previously lettered subdivisions of subsections (1) and (2); deleted former subdivision (2)(c), a saving clause; deleted former subsection (3), relating to hearings and hearing examiners; inserted new matter as subsections (3) and (4); added the second sentence to subsection (5); inserted "or of a

political subdivision of this state" in two places in subsection (7); inserted "actual and necessary" before "expenses" at the end of subsection (7); added the second sentence to subsection (8); and made numerous minor changes in phraseology, style and arrangement.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" for "actual and necessary expenses" in two places in subdivision (7); and made a minor change in phraseology.

The 1977 amendment inserted "unless otherwise provided by law" in the second sentence of subsection (1); and made minor changes in phraseology, punctuation and style.

82A-113, 82A-114. Repealed.

Repeal

Sections 82A-113, 82A-114 (Sec. 1, Ch. 272, L. 1971), relating to functions of

agencies split or not assigned by the reorganization, were repealed by Sec. 21, Ch. 358, Laws 1973.

82A-115. Future agencies and functions. If an agency or a function is not allocated or transferred to a department or a constitutional office by this title or any other act of the legislature, the governor shall, by executive order, allocate that agency for administrative purposes only or function to the appropriate principal department or constitutional office. The governor shall transmit copies of all executive orders issued under this section to the legislature at its next regular session.

History: En. 82A-115 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 13, Ch. 358, L. 1973.

Amendments

The 1973 amendment deleted "of an agency established after the effective date of this chapter" after "function" near the

beginning; substituted "this title" for "this act" in the first sentence; inserted "for administrative purposes only" in the first sentence; substituted "constitutional office" for "unit created by this or any future act"; added the second sentence; and made minor changes in phraseology.

82A-116. Rights of state personnel. Unless otherwise provided in this act, each state officer or employee affected by the reorganization of the executive branch of state government under this title is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable chapter of this title, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee, but to continue only those rights in effect before the effective date of the applicable chapter of this title or an amendment to this title.

History: En. 82A-116 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted

"branch" for "department" near the beginning; substituted "this title" for "this act" in three places; and added "or an amendment to this title" at the end of the section.

82A-117. Rights to property. The department or unit thereof that succeeds to all or part of the functions of an agency under this title also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government.

History: En. 82A-117 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 15, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" in the first sentence.

82A-118. Rules, regulations, and orders. The department or unit thereof that succeeds to all or part of the functions of an agency under this title also succeeds to the rules, regulations, and orders of that agency relating to the functions or parts of functions transferred. The rules, regulations, and orders of any agency in effect before the effective date of the transfer remain in effect until amended, repealed, superseded, or nullified by proper authority or by law.

History: En. 82A-118 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 16, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this

title" for "this act" in the first sentence; and substituted "transfer" for "chapter affecting the agency" in the second sentence.

82A-119. Legal proceedings. The transfer or abolition of an agency or function under this title does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest.

History: En. 82A-119 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 17, Ch. 358, L. 1973.

Amendments

The 1973 amendment inserted "The

transfer or abolition of an agency or function under" at the beginning of the section; substituted "this title" for "this act"; and substituted "transfer or abolition" for "applicable chapter of this act."

82A-120. Rights and duties under existing transactions. The rights, privileges, and duties of the holders of bonds and other obligations issued, and of the parties to contracts, leases, indentures, and other transactions entered into, before the effective date of the transfer of functions under this title, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements is impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency under this title. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions.

History: En. 82A-120 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 18, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "trans-

fer of functions under this title" for "applicable chapter of this act" in the first sentence; and substituted "under this title" for "in this act" at the end of the first sentence.

82A-121. References. Unless inconsistent with this title, if an agency is abolished under this title, or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred.

History: En. 82A-121 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 19, Ch. 358, L. 1973.

Amendments

The 1973 amendment completely rewrote

this section and made it applicable to abolition of agencies or transfer of functions at any time rather than those made by the 1971 reorganization.

82A-122. Federal aid. If any part of this title is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of this title has no effect, and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislative assembly again acts upon the matter.

History: En. 82A-122 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 20, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "title" for "act" twice in the first sentence.

Repealing Clauses

Section 3 of Ch. 272, Laws 1971 read "Sections 59-901 and 59-902, R. C. M. 1947, are repealed."

Section 21 of Ch. 358, Laws 1973 read "Sections 82A-113, 82A-114 and 82A-123, R. C. M. 1947, are repealed."

Separability Clause

Section 5 of Ch. 272, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 272, Laws 1971 read "Sections 1 and 21 of Section 1 of this act and Sections 4 and 5 of this act are effective upon its passage and approval. Chapters 2 through 20 of section 1 of this act are effective upon the date the governor signs an executive order implementing the chapter or on December 31, 1972, whichever occurs first. The governor shall file the executive order with the secretary of state on the day the order is signed. The secretary of state shall file and record the order and send a copy of the order to each addressee on his official mailing list for the Revised Codes of Montana and to each addressee on the mailing list of the publisher of the Revised Codes of Montana. Section 2 of this act is effective when Chapter 4 of Section 1 of this act is effective, and Section 3 is effective when Chapter 2 of Section 1 of this act is effective."

82A-123. Repealed.

Repeal

Section 82A-123 (Sec. 4, Ch. 272, L. 1971), saving laws not specifically amended

or repealed, except in the event of an irreconcilable conflict, was repealed by Sec. 21, Ch. 358, Laws 1973.

CHAPTER 2—DEPARTMENT OF ADMINISTRATION

Section

- 82A-201. Department of administration—creation—head.
 82A-201.1. Functions of department.
 82A-204. Board of investments—allocation—composition—designation.
 82A-206. Merit system council—allocated—composition.
 82A-207. Board of examiners—allocated.
 82A-210. Public employees' retirement board—composition—terms—allocated.
 82A-212. Teachers' retirement board—composition—terms—allocated.
 82A-214. Office of state treasurer abolished—duties transferred.
 82A-215. "Department" substituted in other statutes.
 82A-216. "Department of administration" substituted in other statutes.
 82A-218. Name changes.
 82A-219. Name changes.
 82A-220. Name changes.
 82A-221. Name changes.
 82A-224. Board of housing.
 82A-225. Board of trustees abolished—functions transferred.

82A-201. Department of administration—creation—head. There is created a department of administration. The department head is a director of administration appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-201 by Sec. 1, Ch. 272, L. 1971. utive Reorganization Order 4-71, dated Aug. 20, 1971, effective Aug. 20, 1971, as amended by Executive Reorganization Order 6-72, dated Sept. 25, 1972.

Executive Implementation

This chapter was implemented by Exec-

82A-201.1. Functions of department. The department and its units are responsible for administering laws pertaining to the general administrative and fiscal functions of state government, including, but not limited to, laws pertaining to:

- (1) Highway patrolmen's retirement system (Title 31, chapter 2);
- (2) Federal social security (Title 59, chapter 11);
- (3) Public employees retirement system (Title 68, chapters 1 through 14);
- (4) Teachers' retirement system (Title 75, chapter 62);
- (5) State capitol repair and reconstruction (Title 78, chapter 7);
- (6) Insurance on state buildings (Title 78, chapter 11);
- (7) Deposit and investment of state funds (Title 79, chapter 3);
- (8) State budget (Title 79, chapter 10);
- (9) State general fund warrants (Title 79, chapter 11);
- (10) Unified investment plan (Title 79, chapter 12);
- (11) Refunding state bonds (Title 79, chapter 18);
- (12) Long range building program bonds (Title 79, chapter 22);
- (13) Administrative costs of agencies (Title 79, chapter 24);
- (14) Investments (Title 81, chapter 10);
- (15) Purchasing for state agencies (Title 82, chapter 19);
- (16) General administrative functions (Title 82, chapter 33);
- (17) Judges' retirement system (Title 93, chapter 11).

History: En. 82A-201.1 by Sec. 89, Ch. 326, L. 1974. division (13), was repealed by Sec. 103, Ch. 326, Laws of 1974 and Sec. 4, Ch. 223, Laws of 1975.

Compiler's Notes

Title 79, chapter 24, referred to in sub-

82A-202, 82A-203. Repealed.**Repeal**

Sections 82A-202 and 82A-203 (Sec. 1, Ch. 272, L. 1971; Sec. 1, Ch. 211, L. 1973; Sec. 2, Ch. 250, L. 1973; Sec. 2, Ch. 42,

L. 1974), relating to the abolition of various agencies and the transfer of their functions, were repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-204. Board of investments—allocation—composition—designation.

(1) There is a board of investments.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. Personnel for the board shall be appointed by the department subject to the approval of the board.

(3) The board is composed of five (5) members, appointed by the governor as prescribed in section 82A-112, informed and experienced in the subject of investments.

(4) The board of investments has the sole authority to invest state funds. No other agency may invest state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board shall (a) assist agencies with public money to determine if, when and how much surplus cash is available for investment; (b) determine the amount of surplus treasury cash to be invested; (c) determine the type of investment to be made, and (d) prepare the claim to pay for the investment. The board has the power to veto any investments made under its general supervision.

(5) The board is designated as a quasi-judicial board for the purposes of section 82A-112.

History: En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted "invest state funds" at the end of the first sentence of subsection (4) for "exercise

the investment functions transferred to it under section 82A-205 of this chapter"; deleted "All laws governing the exercise of the investment functions remain in effect" at the beginning of the third sentence of subsection (4); inserted the fourth sentence of subsection (4); and made minor changes in phraseology.

82A-205. Repealed.**Repeal**

Section 82A-205 (Sec. 1, Ch. 272, L. 1971), relating to the transfer of invest-

ment functions to the board of investments, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-206. Merit system council—allocated—composition. (1) There is a merit system council.

(2) The council is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the council may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The council is composed of three (3) members, appointed by the governor for six (6) year overlapping terms. The governor shall appoint the members upon the recommendation of the agencies which participate in the joint merit system, and in accordance with federal requirements.

(4) Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5).

History: En. 82A-206 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 91, Ch. 326, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for "The administratively created agency known as the merit system council is hereby created by law"; deleted former subsection (2) reading "The

council and its functions are continued"; redesignated the remaining subsections; deleted from the end of subsection (3) a sentence reading "The members of the council before the effective date of this chapter continue as members for the remainder of their terms; thereafter, members shall be appointed in accordance with this section"; and made minor changes in phraseology.

82A-207. Board of examiners—allocated. (1) There is a board of examiners.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 92, Ch. 326, L. 1974; amd. Sec. 14, Ch. 343, L. 1977.

Amendments

The 1974 amendment substituted subsection (1) for "The board of examiners, created in article VII, section 20 of the Montana constitution, is continued"; deleted a former subsection (3) which read: "(3) The board retains only the following functions:

"(a) Its functions relating to examining claims against the state, except salaries or compensation of officers fixed by

law, as prescribed in article VII, section 20 of the Montana constitution.

"(b) Its functions relating to planning, financing, administration, and construction of state buildings in the long range building program, contained in Title 78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947"; and made minor changes in phraseology.

The 1977 amendment deleted a former last sentence of subsection (2) reading "However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply."

82A-208. Repealed.

Repeal

Section 82A-208 (Sec. 1, Ch. 272, L. 1971), relating to the board of state pris-

on commissioners, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-209. Repealed.

Repeal

Section 82A-209 (Sec. 1, Ch. 272, L. 1971; Sec. 93, Ch. 323, L. 1974), relating

to state depository board, was repealed by Sec. 11, Ch. 61, Laws 1977.

82A-210. Public employees' retirement board—composition—terms—allocated. (1) There is a public employees' retirement board.

(2) The board consists of five members appointed by the governor. The members are:

(a) three public employees who are members of a public retirement system (not more than one of these members may be an employee of the same department); and

(b) two members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 82A-108.

(5) Members of the board shall be paid their travel expenses as provided for in 59-538, 59-539, and 59-801, as amended, and members of the board who are not members of the public retirement system shall be en-

titled, in addition to travel expenses, to compensation as established for a quasi-judicial board in 82A-112.

History: En. 82A-210 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 190, L. 1974; amd. Sec. 94, Ch. 326, L. 1974; amd. Sec. 3, Ch. 132, L. 1977; amd. Sec. 22, Ch. 453, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 132 and once by Ch. 453. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Section 4, Ch. 132, Laws 1977, read "Implementation of board name change. All references to 'board' or 'board of administration' contained in Title 68 and all references to 'board of administration' contained in Title 11, chapter 20; Title 31, chapter 2; and Title 59, chapter 11, mean the public employees' retirement board provided for in 82A-210."

Amendments

Both 1974 amendments substituted subsection (1) for a former subsection reading "The board of administration, provided for in Title 68, chapter 5, R. C. M.

1947, is continued"; inserted subsections (2) and (3); redesignated former subsection (2) as subsection (4); deleted former subsection (3) which read "The functions of the board, including its functions as the Montana state game wardens' retirement board and as the Montana judges' retirement board, except investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board"; and made minor changes in phraseology.

Chapter 190, Laws of 1974, added subdivision (5).

Chapter 132, Laws of 1977, substituted "public employees' retirement board" for "board of administration"; and made minor changes in style.

Chapter 453, Laws of 1977, substituted "travel expenses" two places in subsection (5) for "actual and necessary expenses"; inserted "as provided for in 59-538, 59-539, and 59-801, as amended" in subsection (5); substituted "82A-112" at the end of subsection (5) for "82A-112(7)"; and made minor changes in phraseology, punctuation and style.

82A-210.1, 82A-210.2. Repealed.

Repeal

Sections 82A-210.1, 82A-210.2 (Sec. 4, Ch. 130, L. 1963; Sec. 3, Ch. 289, L. 1967; Secs. 17, 96, Ch. 326, L. 1974), relating to

game wardens' and judges' retirement boards, were repealed by Sec. 6, Ch. 132, Laws 1977.

82A-211. Repealed.

Repeal

Section 82A-211 (Sec. 1, Ch. 272, L. 1971), relating to the transfer of the quasi-judicial functions of the Montana

highway patrolmen's retirement board, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-212. Teachers' retirement board—composition—terms—allocated.

(1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

- (a) the superintendent of public instruction;
- (b) two persons appointed from the teaching profession who are members of the retirement system;
- (c) two persons appointed as representatives of the public;
- (d) one member who shall be a retired teacher who was a member of the retirement system at the time of retirement.

(3) Each appointed member of the board shall serve a term of 4 years. Each appointed member shall take and subscribe to the oath prescribed by section 3 of Article III of the constitution of the state. The oath shall be filed in the office of the secretary of state.

(4) The board is allocated to the department for administrative purposes only as prescribed in 82A-108. However, the board may hire its own personnel, and 82A-108(2)(d) does not apply.

History: En. 82A-212 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 326, L. 1974; amd. Sec. 1, Ch. 45, L. 1977.

Amendments

The 1974 amendment substituted subsection (1) for a subsection reading "The teachers' retirement board, provided for in Title 75, chapter 62 (sections 96 through 113, public schools recodification laws of 1971), R. C. M. 1947, is continued"; inserted subsections (2) and (3); redesignated former subsection (2)

as subsection (4); deleted former subsection (3) which read "The functions of the board, except the investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board"; and made minor changes in phraseology.

The 1977 amendment increased the number of board members in subsection (2) from five to six; inserted subdivision (2)(d); and made minor changes in phraseology, punctuation and style.

82A-213. Repealed.

Repeal

Section 82A-213 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the data processing advisory committee and the

advisory council on building construction, was repealed by Sec. 103, Ch. 326, Laws of 1974.

82A-214. Office of state treasurer abolished—duties transferred. (1)

The office of state treasurer is abolished.

(2) All of the functions and duties of the state treasurer as prescribed by law are transferred to the director of the department of administration who shall serve as "ex officio" state treasurer.

History: En. Sec. 1, Ch. 136, L. 1973; amd. Sec. 1, Ch. 468, L. 1977.

"State treasurer deleted. Wherever the state treasurer appears in 19-112, 23-3513, 23-4121, 25-501, 59-304, 59-607, 82-601, and 82-4001, state treasurer is deleted."

Compiler's Notes

Section 1, Ch. 121, Laws of 1973, created a section 82A-217 abolishing the passenger tramway safety board and transferring its functions to the department of administration. However, the section was repealed by Sec. 58, Ch. 511, Laws of 1973.

Amendments

The 1977 amendment substituted subsection (1) for "The office of state treasurer is transferred to the department of administration for administrative purposes only as prescribed in section 82A-108, R. C. M. 1947, except: (1) the state treasurer shall continue his fiscal duties as prescribed by law, and section 82A-108(2)(c) does not apply; and (2) the state treasurer may hire his own personnel, and section 82A-108(2)(d) does not apply"; and added subsection (2).

Title of Act

An act transferring the office of state treasurer to the department of administration for administrative purposes only, to comply with article VI, section 7 of the 1972 Montana constitution.

Instructions to Publishers

Section 3, Ch. 468, Laws 1977 read

82A-215. "Department" substituted in other statutes. Wherever the words "state building code council" or "council" appear in sections 69-2112, 69-2116, 69-2117, and 69-2124 the word "department" shall be substituted therefor.

History: En. 82A-215 by Sec. 11, Ch. 226, L. 1974.

82A-216. "Department of administration" substituted in other statutes. Wherever the words "state building code council" appear in sections 66-2416,

66-2802, 69-4117, 82-1202 and 82-1202.1 the words "department of administration" shall be substituted therefor.

History: En. 82A-216 by Sec. 12, Ch. 226, L. 1974.

Instructions to Publishers

Section 13 of Ch. 226, Laws of 1974 read "The publishers of the Revised Codes of Montana 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 11 [82A-215] and

12 [82A-216] of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

Repealing Clause

Section 14 of Ch. 226, Laws 1974 read "Sections 69-2104, 69-2106, 69-2108, 69-2115, 69-2120 and 69-2121 are repealed."

82A-217. Repealed.

Repeal

Section 82A-217 (Sec. 97, Ch. 326, L. 1974), relating to name change of "state

budget director" to "department of administration," was repealed by Sec. 2, Ch. 229, Laws 1977.

82A-218. Name changes. Wherever the words "state controller" or "controller" appear in sections 6-105, 6-107, 6-108, 10-1004, 16-2723, 43-218, 59-701, 59-701.1, 59-701.2, 59-1105, 75-6206, 78-910, 78-1203, 79-101, 79-104, 79-202, 79-414, 79-415, 79-602, 79-2308, 82-1312, 82-1313, 82-1314, 82-3307, 82-3308, 82-3309, 82-3317, and 82-3319, the words "department of administration" are substituted therefor.

History: En. 82A-218 by Sec. 98, Ch. 326, L. 1974; amd. Sec. 12, Ch. 3, L. 1977.

Compiler's Notes

Section 79-2308, referred to in this section, was renumbered as sec. 79-2310 by Sec. 5, Ch. 367, Laws of 1974.

Amendments

The 1977 amendment deleted "78-302."

Repealing Clause

Section 13 of Ch. 3, Laws 1977 read "Sections 44-522, 44-529, 78-302, 82-3205, and 82-3206, R. C. M. 1947, are repealed."

82A-219. Name changes. Wherever the words "state board of examiners" or "board of examiners" appear in sections 25-225 and 82-1804, the words "department of administration" are substituted therefor.

History: En. 82A-219 by Sec. 99, Ch. 326, L. 1974.

82A-220. Name changes. Wherever the words "state board of land commissioners" appear in sections 11-2313, 11-2314, 11-2326, 11-2329, 16-2029, 16-2043, 16-2046, 68-1405, the words "board of investments" are substituted therefor.

History: En. 82A-220 by Sec. 100, Ch. 326, L. 1974.

82A-221. Name changes. Wherever the words "state purchasing department," "purchasing department," or "state purchasing agent," appear in sections 6-501 and 82-1157, the words "department of administration" are substituted therefor.

History: En. 82A-221 by Sec. 101, Ch. 326, L. 1974.

Instructions to Publishers

Section 102 of Ch. 326, Laws of 1974 read "The publishers of the Revised Codes

of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 97, 98, 99, 100, and 101 of this act, when reprinting sections or portions of sections of the Revised

Codes in either supplements to or replacement volumes for the Revised Codes."

Repealing Clause

Section 103 of Ch. 326, Laws 1974 read "Sections 25-504, 31-202, 31-203, 60-301

through 60-306, 68-1403, 75-6203, 79-2401 through 79-2408, 81-1009 through 81-1014, 82-106 through 82-108, 82-602, 82-902, 82-1106, 82-1901, 82-3301 through 82-3305, 82-3322 through 82-3324, 82-3327, 82-3328, 82A-202, 82A-203, 82A-205, 82A-208, 82A-211, 82A-213, 93-1108, are repealed."

82A-222, 82A-223. Repealed.

Repeal

Sections 82A-222, 82A-223 (Secs. 2, 3, Ch. 335, L. 1974; Secs. 15, 16, Ch. 224,

L. 1977); relating to boards of trustees of police reserve funds, were repealed by Sec. 42, Ch. 456, Laws 1977.

82A-224. Board of housing. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 82A-112. The members shall be informed and experienced in housing, economics, or finance.

(3) The board shall elect a chairman and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of 82A-112.

(5) The board is allocated to the department of administration for administrative purposes only as provided in 82A-108.

(6) The department shall provide all necessary staff and services to the board and shall assess the board for reasonable costs.

(7) A member of the board shall not be deemed to have a conflict of interest under the provisions of 59-501 merely because the member is a stockholder, officer, or employee of a lending institution who may participate in the board's programs.

History: En. 82A-224 by Sec. 2, Ch. 163, L. 1977.

the board of housing from the department of community affairs to the department of administration; amending sections 35-503 and 35-526; and repealing section 82A-907, R. C. M. 1947.

Title of Act

An act to transfer the administration of

82A-225. Board of trustees abolished—functions transferred. The board of trustees of the police reserve fund of a city which elects to participate in the municipal police officers' retirement system under 11-1885 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the department of administration and the board, as provided in the Municipal Police Officers' Retirement Act.

History: En. 82A-225 by Sec. 34, Ch. 456, L. 1977.

CHAPTER 3—DEPARTMENT OF AGRICULTURE

Section

82A-301. Department of agriculture—creation—head.

82A-301.1. Functions of department.

82A-304. Montana wheat research and marketing committee—composition—qualification—term—allocation.

82A-304.1. Board of hail insurance transferred to department.

82A-301. Department of agriculture—creation—head. There is a department of agriculture. The department head is a director of agriculture appointed by the governor in accordance with section 82A-106.

History: En. 82A-301 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 218, L. 1974.

ment of a commissioner of agriculture under article XVIII, section 1 of the Montana constitution.

Amendments

The 1974 amendment substituted the present section for a section relating to creation of the department and appoint-

Executive Implementation

This chapter was implemented by Executive Reorganization Order 10-71, dated Dec. 9, 1971, effective Dec. 9, 1971.

82A-301.1. Functions of department. The department and its units are responsible for administering laws pertaining to agriculture, including, but not limited to:

- (1) Regulation of grain (Title 3, chapter 2);
- (2) Seed warehousemen (Title 3, chapter 3);
- (3) Bean warehousemen (Title 3, chapter 7);
- (4) Agricultural seeds (Title 3, chapter 8);
- (5) Barberry control (Title 3, chapter 10);
- (6) Horticulture (Title 3, chapter 11);
- (7) Nurseries and nurserymen (Title 3, chapter 12);
- (8) Orchards (Title 3, chapter 13);
- (9) Standard grades and brands (Title 3, chapter 14);
- (10) Commercial fertilizer (Title 3, chapter 17);
- (11) Mustard seed (Title 3, chapter 19);
- (12) Commercial feeds (Title 3, chapter 20);
- (13) Rural rehabilitation (Title 3, chapter 28);
- (14) Wheat research and marketing (Title 3, chapter 29);
- (15) Agricultural marketing (Title 3, chapter 30);
- (16) Apiculture (Title 3, chapter 31);
- (17) Itinerant merchants (Title 3, chapter 32);
- (18) Produce wholesalers (Title 3, chapter 33);
- (19) Apples, grades, and boxes (Title 3, chapter 34);
- (20) Pesticides (Title 27, chapter 2).

History: En. 82A-301.1 by Sec. 142, Ch. 218, L. 1974.

82A-302, 82A-303. Repealed.

Repeal

Sections 82A-302 and 82A-303 (Sec. 1, Ch. 272, L. 1971), relating to abolition of

various agencies and transfer of their functions, were repealed by Sec. 173, Ch. 218, Laws of 1974.

82A-304. Montana wheat research and marketing committee—composition—qualification—term—allocation. (1) There is a Montana wheat research and marketing committee.

(2) The committee consists of seven (7) members and three (3) ex officio, nonvoting members.

(a) The governor shall appoint one member from each of the following districts:

(i) District I, consisting of Daniels, Sheridan, and Roosevelt counties;

(ii) District II, consisting of Valley, Phillips, Blaine, and Hill counties;

(iii) District III, consisting of Liberty, Toole, Glacier, and Pondera counties;

(iv) District IV, consisting of Chouteau and Teton counties;

(v) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell counties;

(vi) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(vii) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure counties.

(b) The ex officio members are:

(i) The director of the department of agriculture;

(ii) The dean of agriculture of Montana state university;

(iii) A representative of the grain trade in Montana elected by a majority of the appointed members.

(c) Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four (4) of the appointed members may be of the same political party.

(d) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within ninety-one (91) days before the expiration of a committeeman's term.

(3) The appointed members shall serve staggered terms of five (5) years. The ex officio representative of the grain trade shall serve at the pleasure of the committee.

A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member shall be given a copy of the written charges at least ten (10) days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

A member who ceases to reside in the state or in the district from which he was appointed, or who ceases to grow wheat or barley in the state or district, is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(4) The committee is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-304 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 218, L. 1974; amd. Sec. 8, Ch. 71, L. 1975.

Amendments

The 1974 amendment rewrote this section which had provided for the transfer of the Montana wheat research and mar-

keting committee to the department of agriculture for administrative purposes, and for the continuation of its functions as previously prescribed by law.

The 1975 amendment inserted "or barley" in subdivision (2)(c) and in subsection (3); and made minor changes in style.

82A-304.1. Board of hail insurance transferred to department. The state board of hail insurance created in Title 82, chapter 15, and transferred under section 82A-2103 to the state auditor, is transferred to the department of agriculture, for administrative purposes only.

History: En. Sec. 1, Ch. 395, L. 1973.

Title of Act

An act transferring the state board of hail insurance from the state auditor to the department of agriculture for admin-

istrative purposes only; and repealing section 82A-2103, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 395, Laws 1973 read "Section 82A-2103, R. C. M. 1947, is repealed."

82A-305. Repealed.

Repeal

Section 82A-305 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the agricultural marketing advisory body, the poultry advisory board, the state mos-

quito control advisory committee, the agriculture and livestock council, and the Montana wool laboratory advisory committee, was repealed by Sec. 173, Ch. 218, Laws of 1974.

CHAPTER 4—DEPARTMENT OF BUSINESS REGULATION

Section

82A-401. Department of business regulation—head.

82A-401.1. Functions of department.

82A-404. Board of trade abolished—functions transferred.

82A-406. Board of milk control—qualifications—allocated—designation.

82A-407. State banking board—composition—terms—allocation.

82A-401. Department of business regulation—head. There is a department of business regulation. The department head is a director of business regulation appointed by the governor in accordance with section 82A-106.

History: En. 82A-401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 141, Ch. 431, L. 1975.

Amendments

The 1975 amendment deleted "created" after "There is" in the first sentence; and substituted "a director of business regula-

tion appointed by the governor in accordance with section 82A-106" for "the state examiner provided for in article VII, section 8 of the Montana constitution. He shall serve at the pleasure of the governor."

82A-401.1. Functions of department. The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

- (1) banks and banking (Title 5, chapters 1 through 16);
- (2) building and loan associations (Title 7, chapter 1);
- (3) credit unions (Title 14, chapter 1);
- (4) consumer protection (Title 85, chapter 4);
- (5) supervision of the milk industry (Title 27, chapter 4);

- (6) consumer loans (Title 47, chapter 2);
- (7) sale and marketing of coal (Title 50, chapter 6);
- (8) unfair business practices (Title 51, chapter 5);
- (9) regulation of petroleum products (Title 60, chapter 2);
- (10) retail installment sales (Title 74, chapter 6);
- (11) standard weights and measures (Title 90, chapter 1);
- (12) proprietary postsecondary educational institutions (Title 75, chapter 92).

History: En. 82A-401.1 by Sec. 142, Ch. 431, L. 1975; amd. Sec. 6, Ch. 278, L. 1977; amd. Sec. 26, Ch. 518, L. 1977.

Compiler's Notes

This section was amended twice in 1977, once by Ch. 278 and once by Ch. 518. Since the amendments do not appear to conflict, the code commissioner has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 278, Laws of 1977, substituted "1 through 16" at the end of subdivision (1) for "1 through 14."

Chapter 518, Laws of 1977, substituted "chapter 5" at the end of subdivision (8) for "chapter 1"; and made minor changes in style.

82A-402, 82A-403. Repealed.

Repeal

Sections 82A-402, 82A-403 (Sec. 1, Ch. 272, L. 1971), relating to transferring functions of the state banking department

to the department of business regulation, were repealed by Sec. 176, Ch. 431, Laws of 1975.

82A-404. Board of trade abolished—functions transferred. (1) The board of trade, provided for in Title 27, chapter 3, is abolished and its functions in Title 51, chapter 5 are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors or the board of trade means the department of business regulation.

History: En. 82A-404 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 256, L. 1973; amd. Sec. 27, Ch. 518, L. 1977.

Amendments

The 1973 amendment abolished the board of trade, formerly the board of food distributors; transferred its functions to the department of business regulation; and deleted former subsections (2) and (3), relating to the administration and functions of the board.

The 1977 amendment substituted "chap-

ter 5" in the first sentence for "chapter 1 (pertaining to the Unfair Practices Act)."

Repealing Clause

Section 2 of Ch. 256, Laws 1973 read "Sections 27-301 through 27-317, sections 70-201 through 70-233 and 82A-405, R. C. M. 1947, are repealed."

Effective Date

Section 3 of Ch. 256, Laws 1973 read "This act is effective June 30, 1973."

82A-405. Repealed.

Repeal

Section 82A-405 (Sec. 1, Ch. 272, L. 1971), abolishing the Montana trade com-

mission and transferring its functions to the board of trade, was repealed by Sec. 2, Ch. 256, Laws 1973.

82A-406. Board of milk control—qualifications—allocated—designation.

(1) There is a board of milk control.

(2) The board consists of five (5) members. A member may not be connected in any way with the production, processing, distribution, or

wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the two (2) years immediately preceding his appointment, and a member may not hold a public office, either elective or appointive, during his term on the board. Not more than three (3) members may be of the same political party or residents of the same congressional district.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-406 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 143, Ch. 431, L. 1975.

Amendments

The 1975 amendment substituted subsection (1) for "The Montana milk control board, created in Title 27, chapter 4, R. C. M. 1947, is continued, and the board is renamed the board of milk control"; inserted subsection (2); redesignated former subsection (2) as subsection (3);

substituted "allocated" for "transferred" in subsection (3); deleted the former subsection (3) which read "The board retains only the quasi-judicial functions contained in section 27-407, R. C. M. 1947 (pertaining to setting milk prices). Unless inconsistent with this act, any reference in section 27-407, R. C. M. 1947, to the Montana milk control board means the board of milk control"; and made a minor change in phraseology.

82A-406.1. Repealed.

Repeal

Section 82A-406.1 (Sec. 2, Ch. 267, L. 1975; Sec. 58, Ch. 12, L. 1977), relating

to jurisdiction over milk hauling rates, was repealed by Sec. 3, Ch. 19, Laws 1977.

82A-407. State banking board—composition—terms—allocation. (1) There is a state banking board.

(2) The board is composed of seven (7) members, including the director of business regulation, who is the chairman of the board. The remaining six (6) members of the board shall be appointed with consideration given banks of small, medium and large size and to geographical distribution. At least one (1) banker member and one (1) public member shall be appointed from each congressional district of the state. Two (2) of the six (6) members shall be active officers in state banks of Montana, one (1) shall be an active officer of a national bank doing business in Montana and three (3) shall be members of the public, none of whom shall be an officer, director or shareholder of any state or national bank.

(3) The members shall be appointed by the governor for terms of three (3) years. Vacancies shall be filled by appointment for the unexpired term. No member other than the director of business regulation may serve more than two (2) consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in section 82A-108.

History: En. Sec. 1, Ch. 420, L. 1973; Sec. 5-607, R. C. M. 1947; amd. and redes. 82A-407 by Sec. 21, Ch. 431, L. 1975.

Amendments

The 1975 amendment renumbered this section; divided the section into subsections; deleted "and shall act as its executive officer" after "chairman of the board" in the first sentence of subsection (2); added subsections (3) and (4); and made minor changes in phraseology, punctuation and style.

Title of Act

An act to create a state banking board within the department of business regulation and to prescribe its powers, duties and responsibilities.

CHAPTER 5—STATE BOARD OF EDUCATION

Section

82A-501. State board of education.

82A-501.1. Allocation to the state board of education.

82A-501.2. Intent of act.

82A-502. Agencies abolished—functions transferred to co-operative extension service.

82A-507. Board of trustees of state historical society—continued.

82A-508. Montana arts council.

82A-509. State library commission—continued.

82A-512. Commission on federal higher education programs—creation—appointment—terms.

82A-513. Advisory committee—appointment—qualifications—term.

82A-501. State board of education. The state board of education is created in article X, section 9, subsection (1) of the Montana constitution and is provided for in Title 75, chapter 56, R. C. M. 1947.

History: En. 82A-501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 51, L. 1974.

education, created in article XI, section 11 of the Montana constitution and provided for in Title 75, R. C. M. 1947."

Amendments

The 1974 amendment substituted the present section for one reading "There is created a department of education. The department head is the state board of

Executive Implementation

This chapter was implemented by Executive Reorganization Order 5-72, dated Sept. 15, 1972, effective Sept. 15, 1972.

82A-501.1. Allocation to the state board of education. The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and co-ordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, in the Montana arts council, and in the state library commission.

History: En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974.

historical society, the Montana arts council and the state library commission and providing for their relationship to the state board of education; amending sections 82A-104, 82A-110, 82A-501, 82A-502, 82A-507, 82A-508, 82A-509, 82-3603 and 82-3605; and repealing sections 82A-503, 82A-504, 82A-505, 82A-506 and 82A-510, R. C. M. 1947.

Title of Act

An act deleting reference to a department of education in Title 82A and inserting in lieu thereof reference to the state board of education; re-establishing the governance authority for the state

82A-501.2. Intent of act. It is the intent of this act to comply with the spirit of executive reorganization and yet to acknowledge that departmentalization as set forth in the Executive Reorganization Act of 1971 is incompatible with the constitutional and statutory structure for governance of Montana's educational and cultural entities.

History: En. Sec. 1, Ch. 51, L. 1974.

82A-502. Agencies abolished—functions transferred to co-operative extension service. (1) The position of state entomologist of Montana, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the position are transferred to the co-operative extension service. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state entomologist means the co-operative extension service.

(2) The position of state apiarist, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the office, except the functions contained in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947 (pertaining to enforcing the apiary laws), transferred to the department of agriculture in chapter 3 of this act, are transferred to the co-operative extension service. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state apiarist, except the references in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947, means the co-operative extension service.

History: En. 82A-502 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 51, L. 1974.

Amendments

The 1974 amendment deleted "within the department" or "within the department of education" after "extension service" throughout the section.

Compiler's Notes

Sections 82-806 and 82-807, referred to in subsection (2) of this section, were re-numbered as secs. 3-3102 and 3-3103 by Secs. 129 and 130, Ch. 218, Laws of 1974.

82A-503 to 82A-506. Repealed.

Repeal

Sections 82A-503 to 82A-506 (En. 82A-503 to 82A-506 by Sec. 1, Ch. 272, L. 1971), relating to transfer of the histori-

cal society and board of trustees and continuation of the director, were repealed by Sec. 12, Ch. 51, Laws 1974.

82A-507. Board of trustees of state historical society — continued.

(1) The board of trustees of the state historical society, created in Title 44, chapter 5, R. C. M. 1947, is continued.

(2) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(3) Each member is entitled to be paid an amount to be determined by the department head, not to exceed \$25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for their travel expenses.

History: En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977.

Amendments

The 1974 amendment substituted the present subsection (2) for one reading "The board consists of fifteen (15) members, appointed by the governor to serve at his pleasure. Members of the board before the effective date of this chapter serve for the remainder of their terms; thereafter, members shall be appointed and serve in accordance with this subsection. The qualifications for board

members in section 44-520, R. C. M. 1947, apply. The board may organize itself in accordance with section 44-523(1), R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5) of this act"; and deleted a former subsection (3) which read "The board shall only act in an advisory capacity to the state board of education and the director of the state historical society on matters relating to the functions of the director."

The 1975 amendment deleted "compensation, reimbursement" after "terms of office" in subsection (2); and added subsection (3).

The 1977 amendment substituted "travel expenses" in two places in subsection (3) for "actual and necessary expenses"; and inserted "as provided for in 59-538, 59-539,

and 59-801, as amended" in the first sentence of subsection (3); and made minor changes in punctuation and style.

82A-508. Montana arts council. (1) The Montana arts council, created in Title 82, chapter 36, R. C. M. 1947, and its functions are continued.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974.

Amendments

The 1974 amendment deleted a subdivision which read: "The council is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act"; deleted a sentence in subdivision (3) which read:

"Members of the council before the effective date of this chapter serve for the remainder of their terms"; inserted "council" before "members" near the end of the subdivision (2); deleted a subdivision which read: "The director of the council shall be appointed and may be removed by the council, subject to the approval of the board of education"; and made minor changes in phraseology and punctuation.

82A-509. State library commission—continued. (1) The state library commission, created in Title 44, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

History: En. 82A-509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 51, L. 1974.

Amendments

The 1974 amendment deleted a subdivision which read: "The council is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act"; deleted a

sentence in subdivision (3) which read: "Members of the commission before the effective date of this chapter serve for the remainder of their terms"; deleted a subdivision which read: "The state librarian shall be appointed and may be removed by the commission, subject to the approval of the board of education"; and made minor changes in phraseology and punctuation.

82A-510. Repealed.

Repeal

Section 82A-510 (En. 82A-510 by Sec. 1, Ch. 272, L. 1971), relating to abolition of the advisory council on teacher educa-

tion and certification and the council on education for the disadvantaged, was repealed by Sec. 12, Ch. 51, Laws of 1974.

82A-511. Repealed.

Repeal

Section 82A-511 (Sec. 2, Ch. 215, L. 1974), relating to the educational broad-

casting commission, was repealed by Sec. 2, Ch. 341, Laws 1977.

82A-512. Commission on federal higher education programs—creation—appointment—terms. (1) There is a commission on federal higher education programs.

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university. Membership on the commission by these representatives is contingent upon their continued status as trustees.

(3) The non-ex officio members shall serve for terms as provided in section 82A-112(2)(a).

(4) The chairman of the board of regents of higher education is chairman of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in section 82A-108.

(7) The commission members are entitled to compensation as provided in section 82A-112(7).

History: En. 82A-512 by Sec. 3, Ch. 220, L. 1974. and after its passage and approval. Approved March 15, 1974.

Effective Date

Section 5 of Ch. 220, Laws 1974 provided the act should be in effect from

Cross-References

Commission on federal higher education programs, see secs. 75-9301 to 75-9303.

82A-513. Advisory committee—appointment—qualifications—term. (1)
There is a fertilizer advisory committee.

(2) The committee consists of five (5) members. The members shall represent the fertilizer users of the state. The members shall be appointed by the dean of agriculture of Montana state university with the approval of the chairman of the Montana house of representatives agriculture and irrigation committee, the chairman of the Montana senate agriculture committee, the chairman of the Montana plant food association or its successor organization, the director of the co-operative extension service, and the director of the Montana agricultural experiment station.

(3) The members shall serve staggered five (5) year terms. A member may not serve more than seven (7) consecutive years.

History: En. Sec. 4, Ch. 397, L. 1971; Sec. 3-1732, R. C. M. 1947; amd. and redes. 82A-513 by Sec. 99, Ch. 218, L. 1974.

Amendments

The 1974 amendment renumbered this

section; inserted subsection (1) and the first sentence of subsection (2); substituted "station" for "section" at the end of subsection (2); added subsection (3); and made minor changes in phraseology, punctuation and style.

CHAPTER 6—DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Section

82A-601. Department of health and environmental sciences—head.

82A-601.1. Functions of department.

82A-604. Division of environmental sciences—creation.

82A-605. Board of health and environmental sciences creation—members—appointment—qualifications.

82A-606. Air pollution control advisory council—appointment—qualifications—term.

82A-607. Water pollution control advisory council—appointment—qualifications—term.

82A-608. Director of health and environmental sciences—qualifications.

82A-610. Sanitarian advisory council abolished.

82A-612. Board of water and waste water operators—appointment—qualifications—term.

82A-613. Name changes.

82A-614. Name changes.

82A-615. Name changes.

82A-616. Name changes.

82A-617. Name changes.

82A-618. Name changes.

82A-619. Name changes.

82A-620. Name changes.

82A-601. Department of health and environmental sciences—head.

There is a department of health and environmental sciences. The department head is the director of health and environmental sciences appointed by the governor in accordance with section 82A-106, and in addition shall have the qualifications required in section 82A-608.

History: En. 82A-601 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 349, L. 1974; amd. Sec. 1, Ch. 326, L. 1977.

for in section 82A-608 of this chapter"; and made a minor change in phraseology.

The 1977 amendment re-enacted the section without change.

Amendments

The 1974 amendment substituted "appointed by the governor * * * 82A-608" at the end of the section for "provided

Executive Implementation

This chapter was implemented by Executive Reorganization Order 9-71, dated Nov. 26, 1971, effective Nov. 29, 1971.

82A-601.1. Functions of department. The department and its units have responsibility for the administration of laws relating to public health, including, but not limited to, laws on:

- (1) Food services (Title 27, chapter 6);
- (2) Foods, drugs, and cosmetics (Title 27, chapter 7);
- (3) Flour and bread (Title 27, chapter 8);
- (4) Lodging establishments (Title 34, chapter 3);
- (5) Sanitarians (Title 69, chapter 34);
- (6) Ambulance services (Title 69, chapter 36);
- (7) Air pollution (Title 69, chapter 39);
- (8) Refuse disposal areas (Title 69, chapter 40);
- (9) Industrial hygiene (Title 69, chapter 42);
- (10) Tuberculosis control (Title 69, chapter 43);
- (11) Vital statistics (Title 69, chapter 44);
- (12) Local boards of health (Title 69, chapter 45);
- (13) Venereal disease control (Title 69, chapter 46);
- (14) Shoddy control (Title 69, chapter 47);
- (15) Water pollution (Title 69, chapter 48);
- (16) Public water supplies (Title 69, chapter 49);
- (17) Subdivisions (Title 69, chapter 50);
- (18) Cadavers (Title 69, chapter 51);
- (19) Hospitals and related facilities (Title 69, chapter 52);
- (20) Hospital survey and construction (Title 69, chapter 53);
- (21) Cesspools, septic tanks, and privies, etc. (Title 69, chapter 54);
- (22) Public swimming pools and bathing places (Title 69, chapter 55);
- (23) Tourist campgrounds (Title 69, chapter 56);
- (24) Control of ionizing radiation (Title 69, chapter 58);

(25) Water treatment plants and distribution systems (Title 69, chapter 59);

(26) Refuse disposal districts (Title 69, chapter 60).

History: En. 82A-601.1 by Sec. 96, Ch. 349, L. 1974; amd. Sec. 7, Ch. 280, L. 1975.

Amendments

The 1975 amendment deleted a subdivision (27) reading "Alcohol and drug dependence (Title 69, chapter 62)."

82A-602, 82A-603. Repealed.

Repeal

Sections 82A-602 and 82A-603 (Sec. 1, Ch. 272, L. 1971), relating to abolition of

various agencies and transfer of functions, were repealed by Sec. 113, Ch. 349, Laws of 1974.

82A-604. Division of environmental sciences—creation. There is a division of environmental sciences within the department. The department shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division.

History: En. 82A-604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 97, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted "The

department" at the beginning of the second sentence for "The board of health and environmental sciences"; and made a minor change in phraseology.

82A-605. Board of health and environmental sciences creation—members—appointment—qualifications. (1) There is a board of health and environmental sciences.

(2) The board consists of seven members appointed by the governor as follows:

(a) at least two members having professional qualifications in a human health service licensed by a board within a department of professional and occupational licenses;

(b) at least one member being a doctor of veterinary medicine licensed in this state who is engaged in food animal medicine; and

(c) the other members not holding such qualifications shall have demonstrated intelligent and active interest in the field of public health.

(3) The board is designated as a quasi-judicial board for purposes of 82A-112.

History: En. 82A-605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 322, L. 1975; amd. Sec. 1, Ch. 524, L. 1977.

Amendments

The 1975 amendment substituted subsection (1) for "The state board of health provided for in Title 69, chapter 41, R. C. M. 1947, is continued and renamed the board of health and environmental sciences"; inserted subsection (2); and redesignated former subsection (2) as subsection (3).

The 1977 amendment inserted subdivision designations in subsection (2); deleted "or animal" after "human" in subdivision (2)(a); inserted subdivision (2)(b); and made minor changes in phraseology, punctuation and style.

Implementation

Section 2 of Ch. 524, Laws 1977 read "This act shall be implemented as the next vacancies occur on the board of health, provided that when a present member of the board is reappointed to a new term

upon expiration of his present term, no vacancy shall be deemed to have occurred."

vided the act should be in effect from and after its passage and approval. Approved April 8, 1975.

Effective Date

Section 2 of Ch. 322, Laws 1975 pro-

82A-606. Air pollution control advisory council—appointment—qualifications—term. (1) There is an air pollution control advisory council.

(2) The council consists of ten (10) members appointed by the governor, with the consent of the senate, as follows: a representative of labor; a representative of agriculture; a representative of the manufacturing industry; a representative of the fuel industry; a practicing physician licensed in this state; a practicing veterinarian licensed in this state; a practicing registered professional chemical or environmental engineer; a meteorologist; a conservationist; and an urban planning consultant.

(3) The appointed members shall serve at the pleasure of the governor.

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members.

History: En. 82A-606 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 98, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for "The air pollution control advisory council created in Title 69, chapter 39, R. C. M. 1947, is continued"; substituted subsection (2) for a subsection reading "Council membership remains as prescribed in section 69-3908, R. C. M. 1947, except that the executive

officer of the state board of health is replaced by the director of the department of health and environmental sciences"; deleted "After the effective date of this chapter" from the beginning of subsection (3); deleted former subsection (4) reading "The council shall act in an advisory capacity to the department of health and environmental sciences on matters relating to air pollution"; redesignated former subsection (5) as subsection (4); and made minor changes in phraseology.

82A-607. Water pollution control advisory council—appointment—qualifications—term. (1) There is a water pollution control advisory council.

(2) The council consists of eleven (11) members. The members are:

(a) The director of fish and game;

(b) The administrator of the water resources division of the department of natural resources and conservation;

(c) The director of agriculture;

(d) Eight (8) members appointed by the governor as follows: a representative of industry concerned with the disposal of inorganic waste; a representative of industry concerned with the disposal of organic waste; a livestock feeder; a representative of municipal government; a representative of an organization concerned with fishing for sport; a representative from labor; a supervisor of a soil and water conservation district; a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members.

History: En. 82A-607 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 99, Ch. 349, L. 1974.

Amendments

The 1974 amendment rewrote this section. Prior to amendment it read: "(1)

The state water pollution control council, created in Title 69, chapter 48, R. C. M. 1947, is continued and renamed the water pollution control advisory council. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state water pollution control council means the water pollution control advisory council.

"(2) Council membership remains as prescribed in section 69-4810, R. C. M. 1947, except that the executive officer of the state department of health, the state fish and game department director, and the director of the water resources board are replaced by the director of the de-

partment of health and environmental sciences, the director of the fish and game department, and the administrator of the water resources division of the department of natural resources and conservation, respectively.

"(3) After the effective date of this chapter, appointed council members serve at the pleasure of the governor.

"(4) The council shall only act in an advisory capacity to the department of health and environmental sciences on matters relating to water pollution.

"(5) Subsections (5) through (8) of section 82A-110 of this act shall apply to the council and members."

82A-608. Director of health and environmental sciences—qualifications.

The director of health and environmental sciences shall:

- (1) Have a degree of doctor of medicine.
- (2) Be eligible for a license by the board of medical examiners.
- (3) Receive a license from the board of medical examiners not later than 6 months after his appointment.

History: En. 82A-608 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 100, Ch. 349, L. 1974; amd. Sec. 2, Ch. 326, L. 1977.

Amendments

The 1974 amendment inserted the introductory phrase; deleted a subsection which read: "There is created the position of director of health and environmental sciences. The director shall be appointed by the governor in the manner set forth in section 82A-106 of this act for directors who are department heads, and in addition shall"; inserted the present preliminary clause; substituted "medical doctors" in subdivisions (4) and (5) for "medical examiners"; deleted a subsection which read: "Section 82A-107 of this act applies to the director as a department head, subject to the concur-

rence of the board of health and environmental sciences. The director is the chief administrative officer of the department, and he shall in addition perform those functions that are delegated to him by the board of health and environmental sciences"; and made minor changes in phraseology, punctuation and style.

The 1977 amendment deleted former subdivisions (2) and (3) requiring completion of at least one year of graduate study in an approved school of public health and two years' experience as a full-time public health officer; redesignated former subdivisions (4) and (5) as subdivisions (2) and (3); substituted "medical examiners" in subdivisions (2) and (3) for "medical doctors"; and made a minor change in style.

82A-609. Repealed.

Repeal

Section 82A-609 (Sec. 1, Ch. 272, L. 1971), relating to abolition of additional

agencies, was repealed by Sec. 113, Ch. 349, Laws of 1974.

82A-610. Sanitarian advisory council abolished. The sanitarian advisory council, created in section 69-3402, R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 78, L. 1973.

Title of Act

Compiler's Notes

An act abolishing the sanitarian advisory council.

Section 69-3402, referred to in this section, was repealed by Sec. 5, Ch. 314, Laws of 1974.

82A-612. Board of water and waste water operators—appointment—qualifications—term. (1) There is a board of water and waste water operators.

(2) The board consists of seven (7) members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:

(a) Two (2) members who are employed water supply system or water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;

(b) Two (2) members who are employed waste water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;

(c) One (1) member serving on the faculty of a university or college whose major field is related to water supply systems, waste water treatment, chemical or civil engineering, chemistry, or bacteriology;

(d) One (1) member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent;

(e) The administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of six (6) years.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-612 by Sec. 101, Ch. 349, L. 1974.

82A-613. Name changes. Wherever the words "state board of health," "board," "board of health," or "Montana state board of health" appear in sections 48-135, 48-140, 69-4303, 69-4402, 69-4702, 69-5503, 69-5602, 69-5803, and 95-802, the words "department of health and environmental sciences" are substituted therefor.

History: En. 82A-613 by Sec. 104, Ch. 349, L. 1974.

82A-614. Name changes. Wherever the words "state department of health," or "bureau of vital statistics, state board of health" appear in sections 69-5102, 69-5203, 69-5401, and 93-101-4, the words "department of health and environmental sciences" are substituted therefor.

History: En. 82A-614 by Sec. 105, Ch. 349, L. 1974.

82A-615. Name changes. Wherever the words "state board of health" appear in sections 11-2412, 15-2304, and 16-1037, the words "department of health and environmental sciences" are substituted therefor.

History: En. 82A-615 by Sec. 106, Ch. 349, L. 1974.

82A-616. Name changes. Wherever the words "state board," "board," or "state board of health" or "board of health" appear in sections 27-613, 27-615, 27-620, 27-621, 27-625, 27-709, 27-711, 27-713, 27-715, 27-716, 27-717, 27-719, 27-720, 27-802, 27-805, 34-307, 69-3403, 69-3404, 69-3609, 69-4306, 69-4403, 69-4407, 69-4410, 69-4411, 69-4412, 69-4413, 69-4414, 69-4416, 69-4425, 69-4431, 69-4616, 69-4617, 69-4703, 69-4704, 69-4705, 69-4706, 69-5205, 69-5207, 69-5208, 69-5212, 69-5217, 69-5219, 69-5304, 69-5306, 69-5308, 69-5310, 69-5311, 69-5401, 69-5402, 69-5406, 69-5407, 69-5505, 69-5510, 69-5511, 69-5603, 69-5806, 69-5807, 69-5808, 69-5809, 69-5810, 69-5813, 69-5814, and 69-5816, the word "department" is substituted therefor.

History: En. 82A-616 by Sec. 107, Ch. 349, L. 1974.

Compiler's Notes

Sections 69-3403 and 69-3404, referred to in this section, were repealed by Sec. 5, Ch. 314, Laws of 1974.

82A-617. Name changes. Wherever the words "state board" appear in sections 69-4118, 69-4509, 69-4511, and 69-4519, the word "department" is substituted therefor.

History: En. 82A-617 by Sec. 108, Ch. 349, L. 1974.

82A-618. Name changes. Wherever the words "department of health," or "state department of health" appear in sections 69-4004, 69-4005, 69-4007, 69-4009, 69-4110.1, 69-4403, 69-4610, 69-4705, 69-5402, 69-5403, 69-5504, 69-5506, 69-5507, 69-5508, and 69-5603, the word "department" is substituted therefor.

History: En. 82A-618 by Sec. 109, Ch. 349, L. 1974.

82A-619. Name changes. Wherever the words "state registrar" appear in sections 69-4406, 69-4410, 69-4411, 69-4417, 69-4418, 69-4423, 69-4431, 69-4432, 69-4433, 69-4434, and 69-4435, the word "department" is substituted therefor.

History: En. 82A-619 by Sec. 110, Ch. 349, L. 1974.

82A-620. Name changes. Wherever the words "executive officer," or "director" appear in sections 27-615, 69-4509, 69-5311, 69-5904, and 69-5905, the word "department" is substituted therefor.

History: En. 82A-620 by Sec. 111, Ch. 349, L. 1974.

Instructions to Publishers

Section 112 of Ch. 349, Laws 1974 read "The publishers of the Revised Codes of

Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 104, 105, 106, 107, 108, 109, 110 and 111 of this act, when reprinting sections or portions of sections

of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

Repealing Clause

Section 113 of Ch. 349, Laws 1974 read "Sections 27-618, 69-3408, 69-3409, 69-4101, 69-4103, 69-4105, 69-4107 through 69-4109, 69-4113, 69-4210, 69-4810, 69-4811,

69-4813, 69-5211, 69-5214, 69-5215, 69-5216, 69-5805, 69-6202, 82A-602, 82A-603, and 82A-609 are repealed."

Effective Date

Section 114 of Ch. 349, Laws 1974 provided the act should be in effect from and after its passage and approval. Approved March 28, 1974.

CHAPTER 7—DEPARTMENT OF HIGHWAYS

Section

82A-701. Department of highways—creation—head.

82A-701.1. Functions of department.

82A-706.1. Highway commission.

82A-709. Board of highway appeals abolished—functions transferred.

82A-701. Department of highways—creation—head. There is a department of highways. The department head is a director of highways appointed by the governor in accordance with section 82A-106.

History: En. 82A-701 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 204, Ch. 316, L. 1974.

section for "provided for in section 82A-707 of this chapter"; and made minor changes in phraseology.

Amendments

The 1974 amendment substituted "appointed by the governor in accordance with section 82A-106" at the end of the

Executive Implementation

This chapter was implemented by Executive Reorganization Order 12-71, dated Dec. 15, 1971, effective Dec. 16, 1971.

82A-701.1. Functions of department. The department has responsibility for the administration of laws relating to public highways, including, but not limited to, laws on:

- (1) Speed and traffic regulations (Title 32, chapters 11 and 21);
- (2) Designation and construction of federal-aid and state highways (Title 32, chapters 24, 26, and 39);
- (3) State vehicle fees (Title 32, chapters 32 through 34);
- (4) Letting contracts for highway construction (Title 32, chapter 41);
- (5) Designation of controlled access highways (Title 32, chapter 43);
- (6) Regulation of junkyards (Title 32, chapter 45);
- (7) Regulation of outdoor advertising (Title 32, chapter 47);
- (8) State motor pool (Title 53, chapter 5);
- (9) Motor vehicle reciprocity (Title 53, chapter 7).

History: En. 82A-701.1 by Sec. 205, Ch. 316, L. 1974.

82A-702 to 82A-706. Repealed.

Repeal

Sections 82A-702 to 82A-706 (Sec. 1, Ch. 272, L. 1971; Sec. 3, Ch. 250, L. 1973; Sec. 206, Ch. 316, L. 1974), relating to

reorganization of the department of highways, were repealed by Sec. 3, Ch. 28, Laws of 1974; Sec. 209, Ch. 316, Laws of 1974.

82A-706.1. Highway commission. (1) (a) The highway commission consists of five members. One member shall be a bona fide resident of and

appointed from each of these districts, each composed of the counties named:

(i) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(ii) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(iii) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

(iv) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(v) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(b) No two members may at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(c) Not more than three members may at the time of appointment or thereafter during their respective terms be members of the same political party.

(d) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee may be a member of the commission.

(2) No resolution, motion, or other decision of the commission may be adopted or passed without the favorable vote of at least three members.

(3) The commission is allocated to the department for administrative purposes only as prescribed in 82A-108.

(4) The commission is designated as a quasi-judicial board for purposes of 82A-112, however the provision of 82A-112(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

History: En. Sec. 4-102, Ch. 197, L. 1965; Sec. 32-2402, R. C. M. 1947; amd. and redes. 82A-706.1 by Sec. 72, Ch. 316, L. 1974; amd. Sec. 2, Ch. 186, L. 1977.

Amendments

The 1974 amendment renumbered this section; deleted "state" before "highway commission"; deleted "to be appointed by the governor with the consent of the senate" at the end of the first sentence; deleted a former second sentence read-

ing "Members of the commission now holding office shall continue until the expiration of their terms"; and added the rest of the section.

The 1977 amendment added the exception clause at the end of subsection (4); deleted a second sentence from subsection (4) reading "However, members of the commission on December 15, 1971, shall serve for the remainder of their terms"; and made minor changes in style.

DECISIONS UNDER FORMER LAW

Application

Resolution adopted by state highway commission authorizing chief counsel thereof "to employ and engage such outside fee counsel as he, in his discretion shall deem reasonable and necessary, to

represent the Montana Highway Commission in whatever type of case arises," was proper and did not infringe on any powers, duties or responsibilities of state attorney general. *Woodahl v. State Highway Commission*, 155 M 32, 465 P 2d 818.

82A-707, 82A-708. Repealed.

Repeal

Sections 82A-707 and 82A-708 (Sec. 1, Ch. 272, L. 1971), relating to creation of

the director of highways, and abolition of various highway agencies, were repealed by Sec. 209, Ch. 316, Laws of 1974.

82A-709. Board of highway appeals abolished—functions transferred. The board of highway appeals, created in section 82A-704, is abolished and its functions are transferred as follows:

(1) Its functions relating to the quasi-judicial capacity of hearing grievances of personnel of the department are transferred to the board of personnel appeals provided for in section 82A-1014. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the board of highway appeals (pertaining to its functions of hearing grievances of personnel of the department) means the board of personnel appeals;

(2) Its functions relating to the hearing of disputes resulting from the administration and enforcement of proportional registration agreements under Title 53, chapter 7, are transferred to the highway commission. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the board of highway appeals (pertaining to its functions contained in Title 53, chapter 7) means the highway commission.

History: En. 82A-709 by Sec. 1, Ch. 28, L. 1974.

Title of Act

An act abolishing the board of highway appeals and transferring its functions to the board of personnel appeals and the highway commission; providing for personnel appeals; and repealing sections 82A-704 and 82A-705, R. C. M. 1947.

Compiler's Notes

Section 82A-704, referred to near the beginning of this section, was repealed by Sec. 3, Ch. 28, Laws of 1974.

CHAPTER 8—DEPARTMENT OF INSTITUTIONS

Section

82A-801. Department of institutions—creation—head.

82A-801.1. Functions of department.

82A-804. Board of pardons—composition—allocation—designation.

82A-805. Board of eugenics—composition—qualifications—allocation—designation.

82A-806. Board of institutions—composition—qualifications—designation.

82A-801. Department of institutions—creation—head. There is created a department of institutions. The department head is a director of institutions appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-801 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 13-71, dated Dec. 16, 1971, effective Dec. 17, 1971.

82A-801.1. Functions of department. The department and its units are responsible for the administration of laws relating to institutions, including, but not limited to, laws pertaining to:

- (1) District youth guidance homes (Title 10, chapter 11);
- (2) Warm Springs state hospital (Title 38, chapter 1);
- (3) Examination and commitment of persons mentally deranged (Title 38, chapter 2);
- (4) Patient transfers (Title 38, chapter 3);

- (5) Examination of patients and voluntary admissions (Title 38, chapter 4);
- (6) Convalescent leave of patients (Title 38, chapter 5);
- (7) Voluntary sterilizations (Title 69, chapter 64);
- (8) Juvenile facilities (Title 80, chapter 14);
- (9) Institutional industries (Title 80, chapter 15);
- (10) Payments for care of patients (Title 80, chapter 16);
- (11) Galen state hospital (Title 80, chapter 17);
- (12) Montana veterans' home (Title 80, chapter 18);
- (13) State prison (Title 80, chapter 19);
- (14) Montana childrens center (Title 80, chapter 21);
- (15) Mountain View school and Pine Hills school (Title 80, chapter 22);
- (16) Boulder river school and hospital (Title 80, chapter 23);
- (17) Mental hygiene services and mental health centers (Title 80, chapter 24);
- (18) Montana center for the aged (Title 80, chapter 25);
- (19) Mental retardation programs (Title 80, chapter 26);
- (20) Probation, parole, and clemency (Title 94, chapter 98);
- (21) Alcohol and drug dependence (Title 80, chapter 27).

History: En. 82A-801.1 by Sec. 77, Ch. 213, Laws of 1963 and Sec. 35, Ch. 468, 120, L. 1974; amd. Sec. 8, Ch. 280, L. 1975. Laws of 1975.

Compiler's Notes

Title 38, chapter 3, referred to in subdivision (4), was repealed by Sec. 10, Ch.

Amendments

The 1975 amendment added subdivision (21).

82A-802, 82A-803. Repealed.

Repeal

Sections 82A-802 and 82A-803 (Sec. 1, Ch. 272, L. 1971; Secs. 4, 5, Ch. 250, L. 1973), relating to the abolishment of the state department of institutions and the

state board of institutions, and the transfer of their functions to the department of institutions, were repealed by Sec. 96, Ch. 120, Laws of 1974.

82A-804. Board of pardons — composition — allocation — designation.

(1) There is a board of pardons.

(2) The board consists of three (3) members at least one of whom shall have particular knowledge of Indian culture and problems. Members of the board shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108 (2)(d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112, except board members shall be compensated as provided by legislative appropriation.

History: En. 82A-804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 78, Ch. 120, L. 1974; amd. Sec. 1, Ch. 333, L. 1975.

Amendments

The 1974 amendment substituted subsection (1) for a statement continuing the state board of pardons; inserted subsection (2); substituted "allocated" for "transferred" in subsection (3); deleted a former subsection (4) which changed the

name of the state director of probation and parole to the administrator of probation and parole; and made minor changes in phraseology and punctuation.

The 1975 amendment added all of subsection (2) after "The board consists of three (3) members"; and added to subsection (4) "except board members shall be compensated as provided by legislative appropriations."

82A-805. Board of eugenics—composition—qualifications—allocation—designation. (1) There is a board of eugenics.

(2) The board consists of seven (7) members, and one (1) ex officio member. The members are:

(a) Two (2) physicians licensed to practice medicine and surgery in this state to be appointed after considering the recommendation of the Montana medical association;

(b) One (1) lawyer licensed to practice law in this state to be appointed after considering the recommendation of the Montana bar association;

(c) Three (3) lay members;

(d) One (1) psychologist;

(e) The director of institutions, who is an ex officio member of the board.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-805 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 79, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted sub-

section (1) for a statement continuing the state board of eugenics; inserted subsection (2); substituted "allocated" for "transferred" in subsection (3); and made minor changes in phraseology, punctuation and style.

82A-806. Board of institutions—composition—qualifications—designation. (1) There is a board of institutions.

(2) The board consists of five (5) members. The board members shall be selected so that not more than three (3) are from the same congressional district, and so that not more than three (3) are affiliated with the same political party. The members shall be qualified by aptitude, experience, and interest.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-806 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 80, Ch. 120, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for a statement continuing the state board of institutions; inserted subsection (2); substituted "allocated"

for "transferred" in subsection (3); deleted a former subsection (3) relating to the board acting in an advisory capacity to the department; deleted a former subsection (4) relating to the board continuing to hear disputes concerning custodial institutions including inmate and personnel grievances; and made minor changes in phraseology and punctuation.

82A-807. Repealed.**Repeal**

Section 82A-807 (Sec. 1, Ch. 272, L. 1971), relating to abolishment of the Boulder River school construction committee, council of superintendents, the

institutional chaplaincy advisory committee, and the advisory councils to the state prison and veterans' home, was repealed by Sec. 96, Ch. 120, Laws of 1974.

CHAPTER 9—DEPARTMENT OF COMMUNITY AFFAIRS**Section**

82A-901. Department of community affairs—creation—head.

82A-901.1. Functions of department.

82A-904. Board of county printing—composition—qualification—allocation.

82A-905. Board of aeronautics—composition—qualification—allocation—designation.

82A-901. Department of community affairs—creation—head. There is created a department of community affairs. The department head is a director of community affairs appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-901 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 213, L. 1975.

Amendments

The 1975 amendment substituted "department of community affairs" for "department of intergovernmental relations" throughout the section.

Temporary Provisions

Chapter 120, Laws of 1975, provides that the department of intergovernmental relations [department of community affairs]

is directed to distribute to municipalities and counties funds appropriated for the support of local government study commissions, sets forth a schedule of disbursement, provides for the application of additional funds, and provides that the act should be effective on approval. Approved March 24, 1975.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 4-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

82A-901.1. Functions of department. The department and its units are responsible for administering laws pertaining to relationships between the state and local and federal governments, including, but not limited to, laws pertaining to:

- (1) Aeronautics (Title 1, chapters 1 to 9);
- (2) Highway traffic safety (Title 32, chapter 46);
- (3) Indian affairs (Title 82, chapter 27);
- (4) Planning and economic development (Title 82, chapter 37);
- (5) Examination of political subdivisions (Title 82, chapter 43);
- (6) Economic opportunity and poverty relief (Title 71, chapter 16);
- (7) County printing (Title 16, chapter 12).

History: En. 82A-901.1 by Sec. 102, Ch. 348, L. 1974.

82A-902, 82A-903. Repealed.**Repeal**

Sections 82A-902 and 82A-903 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the highway safety board, the department of planning and economic development,

and the planning and development commission, and the transfer of various functions to the department of intergovernmental relations, were repealed by Sec. 107, Ch. 348, Laws of 1974.

82A-904. Board of county printing—composition—qualification—allocation. (1) There is a board of county printing.

(2) The board consists of five (5) members appointed by the governor for terms of two (2) years. The members are:

- (a) Two (2) members of the printing industry;
- (b) Two (2) county commissioners;
- (c) One (1) member of the general public.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-904 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 103, Ch. 348, L. 1974.

Amendments

The 1974 amendment rewrote this section. Prior to amendment, it read: "(1) The county printing commission, provided for in Title 16, chapter 12, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of county printing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the county printing commission means the board of county printing.

"(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

"(3) Members of the board before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed in section 16-1227, R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110 of this act."

82A-905. Board of aeronautics—composition—qualification—allocation—designation. (1) There is a board of aeronautics.

(2) The board consists of seven (7) members. The members are:

- (a) One (1) member of the Montana pilots' association;
- (b) One (1) member of the Montana chamber of commerce;
- (c) One (1) member of the municipal league;
- (d) One (1) member of the county commissioners association;
- (e) One (1) person actively engaged in aviation education in this state;
- (f) One (1) person, representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;
- (g) One (1) person who must at the time of appointment be an active base operator in this state or an official of a base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 104, Ch. 348, L. 1974.

Amendments

The 1974 amendment substituted section (1) for a subsection reading: "(1) The state aeronautics commission, created in Title 1, chapter 2, R. C. M. 1947, is

continued, and the commission is renamed the board of aeronautics"; inserted subsection (2) and redesignated former subsection (2) as subsection (3); deleted former subsection (3) which read: "The board shall act in an advisory capacity to the department on those matters relating to the functions of the aeronautics commission transferred to the department in

section 82A-903 of this chapter"; deleted former subsection (4) which read: "The board retains the quasi-judicial and quasi-legislative functions contained in sections 1-322 through 1-324, R. C. M. 1947 (pertaining to granting and suspending certificates of public convenience and necessity for air carriers, setting rates, and related matters). Unless inconsistent with

this act, any reference in Title 1, chapter 2, R. C. M. 1947, to the state aeronautics commission relating to the quasi-judicial and quasi-legislative functions retained in the board means the board of aeronautics"; redesignated former subsection (5) as subsection (4); and made minor changes in phraseology.

82A-906. Repealed.

Repeal

Section 82A-906 (Sec. 1, Ch. 272, L. 1971), relating to abolition of the gover-

nor's highway safety task force, was repealed by Sec. 107, Ch. 348, Laws of 1974.

82A-907. Repealed.

Repeal

Section 82A-907 (Sec. 4, Ch. 461, L. 1975), relating to the board of housing,

was repealed by Sec. 4, Ch. 163, Laws 1977.

CHAPTER 10—DEPARTMENT OF LABOR AND INDUSTRY

Section

- 82A-1001. Department of labor and industry—creation—head.
- 82A-1002. Agencies abolished—functions transferred to department.
- 82A-1003. Additional functions transferred to the department.
- 82A-1004. Division of workers' compensation—creation—head.
- 82A-1005. Agencies abolished—functions transferred to division of workmen's compensation.
- 82A-1006. Division of employment security—creation—head—bureaus.
- 82A-1007. Employment security commission abolished—functions transferred to division of employment security.
- 82A-1008. Board of labor appeals—creation—allocation—composition—function—designation.
- 82A-1009. Functions transferred to board of labor appeals.
- 82A-1010. Additional agencies abolished.
- 82A-1011. Occupational health advisory committee abolished.
- 82A-1014. Board of personnel appeals created.
- 82A-1015. Commission for human rights.
- 82A-1016. Creation of office of workers' compensation judge—allocation.

82A-1001. Department of labor and industry—creation—head. There is created a department of labor and industry. As prescribed in article XVIII, section 1 of the Montana constitution, the department head is the commissioner of labor and industry. The commissioner holding office before the effective date of this chapter continues as the commissioner of the department of labor and industry created by this chapter for the remainder of his term. The commissioner shall be appointed and serve as provided in article XVIII, section 1 of the Montana constitution.

History: En. 82A-1001 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 11-71, dated Dec. 10, 1971, effective Dec. 13, 1971.

Powers of Labor Commissioner

Although commissioner of labor is re-

quired by section 41-701 to keep copies of collective bargaining agreements relating to public works, he has no power to make decisions with respect to labor agreements, and thus a letter of opinion as to the applicability of a labor contract does not constitute a determinative agency action. *Sletten Constr. Co. v. International Union of Operating Engineers, Local 400, 383 F Supp 853.*

82A-1002. Agencies abolished—functions transferred to department.

(1) The department of labor and industry, created in Title 41, chapter 16, R. C. M. 1947, and its units are abolished, and their functions are transferred to the department of labor and industry created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of labor and industry or its units means the department of labor and industry created in this chapter.

(2) The apprenticeship council, provided for in Title 41, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the apprenticeship council means the department of labor and industry created in this chapter.

(3) The commission on the status of women, administratively created, is abolished, and its functions are transferred to the department.

History: En. 82A-1002 by Sec. 1, Ch. 272, L. 1971.

82A-1003. Additional functions transferred to the department. (1)

The functions of the state board of health, which are contained in Title 41, chapter 22, R. C. M. 1947 (pertaining to nurses' employment practices), are transferred to the department. Unless inconsistent with this act, any reference in Title 41, chapter 22, R. C. M. 1947, to the state board of health means the department of labor and industry created in this chapter.

(2) The functions of the state department of health relating to enforcing the industrial hygiene laws under section 69-4203(5), R. C. M. 1947, are transferred to the department of labor and industry created in this chapter. The department of labor and industry, on its own motion, or whenever it receives a notice of an alleged violation of the industrial hygiene laws or rules established thereunder from the department of health and environmental sciences, shall file a complaint of the alleged violation in the appropriate court and diligently pursue the action to its completion. Unless inconsistent with this act, any reference in Title 69, chapter 42, R. C. M. 1947, to the state department of health relating to its enforcement functions means the department of labor and industry created in this chapter.

History: En. 82A-1003 by Sec. 1, Ch. 272, L. 1971.

Compiler's Notes

Section 69-4203, referred to in subsection (2), was repealed by Sec. 18, Ch. 316, Laws 1971.

82A-1004. Division of workers' compensation — creation — head. (1)

There is created a division of workers' compensation within the department. The division head is an administrator appointed by the governor as are directors in accordance with section 82A-106 of this act. Any reference in the Revised Codes of Montana, 1947, to the industrial accident board or the division of workmen's compensation means the division of workers' compensation.

(2) The division is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the

division may hire its own personnel, and section 82A-108 (2)(d) does not apply.

History: En. 82A-1004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 87, Ch. 23, L. 1975.

Repealing Clause

Section 88 of Ch. 23, Laws 1975 read "Sections 92-104, 92-105, 92-108 through 92-110, 92-112 through 92-115, 92-414, 92-415, 92-419, 92-420, 92-427, 92-428, 92-430, 92-431, 92-611, 92-612, 92-841, 92-843, 92-1404, R. C. M. 1947, are repealed."

Amendments

The 1975 amendment substituted "workers'" for "workmen's" in subsection (1); and added the last sentence in subsection (1).

82A-1005. Agencies abolished—functions transferred to division of workmen's compensation. (1) The industrial accident board, created in Title 92, chapter 1, R. C. M. 1947, and its units, including the department of safety, created in Title 41, chapter 17, R. C. M. 1947, are abolished, and their functions, except the board's investment functions contained in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, are transferred to the division. The administrator of the division shall make the final determinations for workmen's compensation claims. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the industrial accident board or its units, except the references relating to the board's investment functions in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(2) The advisory committee on boiler rules, created in Title 69, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the advisory committee on boiler rules means the division of workmen's compensation of the department of labor and industry created in this chapter.

(3) The board of examiners of applicants for coal mine foreman and mine examiner, and the board of examiners of applicants for state coal mine inspector, provided for in Title 50, chapter 4, R. C. M. 1947, are abolished, and their functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of examiners of applicants for coal mine foreman and mine examiner and the board of examiners of applicants for state coal mine inspector, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(4) The power line construction code committee, administratively created, is abolished, and its functions are transferred to the division.

History: En. 82A-1005 by Sec. 1, Ch. 272, L. 1971.

82A-1006. Division of employment security — creation — head — bureaus. (1) There is created a division of employment security within the department. The division head is an administrator appointed by the commissioner of labor and industry.

(2) Within the division of employment security are the following bureaus:

- (a) The bureau of Montana state employment service.
- (b) The bureau of unemployment insurance.

Each bureau shall be headed by a full-time chief appointed by the administrator. The administrator shall establish such other bureaus within the division as are required for the receipt of federal funds. Personnel of the division shall be employed in accordance with merit system standards.

History: En. 82A-1006 by Sec. 1, Ch. 272, L. 1971.

82A-1007. Employment security commission abolished—functions transferred to division of employment security. The employment security commission of Montana, created in Title 87, chapter 1, R. C. M. 1947, and its units are abolished, and their functions, except the quasi-judicial functions transferred to the board of labor appeals in section 82A-1009 of this chapter, are transferred to the division of employment security.

History: En. 82A-1007 by Sec. 1, Ch. 272, L. 1971.

82A-1008. Board of labor appeals—creation—allocation—composition—function—designation. (1) There is created a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is composed of three (3) members of the public, who are not employees of the state government, appointed by the governor as prescribed in section 82A-112 of this act.

(4) The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971.

82A-1009. Functions transferred to board of labor appeals. The quasi-judicial functions of the employment security commission of Montana, contained in Title 87, chapter 1, R. C. M. 1947 (pertaining to the unemployment compensation laws), are transferred to the board. Unless inconsistent with this act, any reference in Title 87, chapter 1, R. C. M. 1947, to the employment security commission of Montana relating to the quasi-judicial functions transferred to the board of labor appeals means the board of labor appeals.

History: En. 82A-1009 by Sec. 1, Ch. 272, L. 1971.

82A-1010. Additional agencies abolished. The following agencies are abolished:

(1) The labor-safety study commission, provided for in Title 41, chapter 21, R. C. M. 1947.

(2) The state board of arbitration and conciliation, created in Title 41, chapter 9, R. C. M. 1947.

History: En. 82A-1010 by Sec. 1, Ch. 272, L. 1971.

82A-1011. Occupational health advisory committee abolished. The occupation health advisory committee, created in section 69-4210, R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 225, L. 1973.

Title of Act

Compiler's Notes

An act abolishing the occupation health advisory committee.

Section 69-4210, referred to in this section, was repealed by Sec. 113, Ch. 349, Laws of 1974.

82A-1014. Board of personnel appeals created. (1) There is created a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in section 82A-108.

(3) The board consists of five members appointed by the governor. Two members shall represent management, two members shall represent employees or employee organizations of the state, and one member shall represent a neutral position.

(4) (a) An employee or his representative affected by the operation of Title 59, chapter 9, is entitled to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board.

(b) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works or by any other agency of state government against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard, under the provisions of the grievance procedure prescribed by the board.

(c) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the appropriate agency or agencies of state government requiring such action as will resolve the employee's grievance. In any hearing the board is not bound by statutory or common law rules of evidence. An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by this section in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.

(d) The board or the employee may petition for the enforcement of the board's order and for appropriate temporary relief, and shall file in the district court the record of the proceedings. Upon the filing of the

petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) The board is designated a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973; amd. Sec. 1, Ch. 47, L. 1974; amd. Sec. 1, Ch. 378, L. 1975; amd. Sec. 1, Ch. 545, L. 1977.

Amendments

The 1974 amendment deleted "as prescribed in section 82A-112" after "governor" near the beginning of subsection (3); and added subsection (5).

The 1975 amendment inserted the subdivision (4)(a) designation; substituted "Title 59, chapter 9, R. C. M. 1947" for "this act" in subdivision (4)(a); deleted a final sentence in subdivision (4)(a) reading "The board may instruct the department to take corrective action that may be necessary to resolve grievances that are found to be legitimate"; and added subdivisions (4)(b) to (4)(d).

The 1977 amendment inserted "or by any other agency of state government" in subsection (4)(b); substituted "appropriate agency or agencies of state government" in the first sentence of subsection (4)(c) for "department of administration"; added the last two sentences of subsection (4)(c); and made minor changes in phraseology and style.

Effective Dates

Section 2 of Ch. 378, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 10, 1975.

Section 2 of Ch. 545, Laws 1977 provided that the act should be in effect on its passage and approval. Approved May 10, 1977.

82A-1015. Commission for human rights. (1) There is a commission for human rights.

(2) The commission consists of five (5) members appointed by the governor.

(3) The commission is designated as a quasi-judicial board for the purposes of section 82A-112.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in section 82A-108, except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Section 82A-108 (2) (d) shall not apply for purposes of this section.

History: En. 82A-1015 by Sec. 4, Ch. 283, L. 1974; amd. Sec. 1, Ch. 478, L. 1975.

Amendments

The 1975 amendment added to subsection (4) "except that the commission may

hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Section 82A-108 (2)(d) shall not apply for purposes of this section."

82A-1016. Creation of office of workers' compensation judge—allocation. (1) There is created the office of workers' compensation judge. The office is allocated to the department of administration for administrative purposes only as prescribed in section 82A-108, R. C. M. 1947.

(2) The governor shall appoint the workers' compensation judge for a term of six (6) years in the same manner provided by section 93-705 through 93-717, R. C. M. 1947, for the appointment of supreme or district court judges. A vacancy shall be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in article VII, section 9 of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but shall be accorded retirement benefits under the public employees' retirement system.

History: En. 82A-1016 by Sec. 1, Ch. 272, L. 1975.

ing sections 92-812, 92-813, 92-815 through 92-817, 92-819, 92-821, 92-822, 92-823, 92-824, 92-824.1, 92-825, 92-827 through 92-836, 92-1347, 92-1350, 92-1351, 92-1353 through 92-1355, 92-1357, 92-1359 through 92-1365 and providing an effective date.

Title of Act

An act creating the office of workers' compensation judge; providing for its administration and jurisdiction; and repeal-

CHAPTER 11—DEPARTMENT OF STATE LANDS

Section

82A-1101. Department of state lands—head.

82A-1101.1. Functions of department.

82A-1104. Commissioner of state lands.

82A-1101. Department of state lands—head. There is a department of state lands. The department head is the board of land commissioners, provided for in article X, section 4 of the constitution of this state.

History: En. 82A-1101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 113, Ch. 428, L. 1973.

commissioners, created in article XI, section 4 of the Montana constitution"; and made a minor change in style.

Amendments

The 1973 amendment rewrote the second sentence which formerly read "The department head is the state board of land

Executive Implementation

This chapter was implemented by Executive Reorganization Order 2-71, dated July 26, 1971, effective Aug. 1, 1971.

82A-1101.1. Functions of department. The department has responsibility for the administration of laws relating to state lands, including, but not limited to, laws on:

- (1) Selection, classification, appraisal, and exchange of lands (Title 81, chapter 3);
- (2) Leasing of agricultural lands (Title 81, chapter 4);
- (3) Coal mining leases and permits (Title 81, chapter 5);
- (4) Prospecting permits and mining lease (Title 81, chapter 6);
- (5) Leases and permits for deposits of stone, gravel, sand, and other minerals (Title 81, chapter 7)
- (6) Granting of easements for public purposes (Title 81, chapter 8);

- (7) Sale of state lands (Title 81, chapter 9);
- (8) Timber sales (Title 81, chapter 16);
- (9) Oil and gas leases (Title 81, chapter 17);
- (10) Hydroelectric power sites (Title 81, chapter 18);
- (11) Exchange of timbered, cut, or burned over lands (Title 81, chapter 22);
- (12) Resource development (Title 81, chapter 24);
- (13) Mined land reclamation (Title 50, chapters 10 and 12).

History: En. 82A-1101.1 by Sec. 114, Ch. 428, L. 1973.

revision of the laws relating to the department of state lands, and providing that this act is effective upon its passage and approval.

Title of Act

An act for the codification and general

82A-1102, 82A-1103. Repealed.

Repeal
Sections 82A-1102, 82A-1103 (Sec. 1, Ch. 272, L. 1971), relating to functions of the

department of state lands, were repealed by Sec. 116, Ch. 428, Laws 1973.

82A-1104. Commissioner of state lands. (1) There is a commissioner of state lands.

(2) The commissioner is the chief administrative officer of the department, and under the direction of the board of land commissioners he is responsible for the administration of the functions vested in the department. He shall also perform those functions that are delegated to him by the board.

(3) The commissioner shall be appointed and serve as provided for directors in section 82A-106.

History: En. 82A-1104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 115, Ch. 428, L. 1973.

end of the first sentence in subsection (2); and made minor changes in style and phraseology.

Amendments

The 1973 amendment divided subsection (2) into two sentences; inserted "and" following "administrative officer of the department" in the first sentence of subsection (2); deleted "state" before "board of land commissioners" in the first sentence of subsection (2); inserted "he is responsible for the administration of the functions vested in the department" at the

Repealing Clause

Section 116 of Ch. 428, Laws 1973 read "Sections 50-1101 through 50-1114, 81-101, 81-201 through 81-203, 81-204.1, 81-207 through 81-210, 81-305, 81-306, 81-422.1, 81-618 through 81-620, 81-916, 81-934 through 81-942, 81-1301, 81-1702.3, 81-1703, 81-1713, 81-1714, 81-1724, 81-2304, 82-904, 82A-1102, 82A-1103, and 83-105, R. C. M. 1947, are repealed."

CHAPTER 12—DEPARTMENT OF JUSTICE

Section

- 82A-1201. Department of justice—creation—head.
- 82A-1202. Agencies abolished—functions transferred to department.
- 82A-1203. Additional functions transferred to department.
- 82A-1204. Division of motor vehicles—creation.
- 82A-1205. Agencies abolished—functions transferred to division.
- 82A-1206. Functions of highway patrol and highway patrol chief transferred to division.
- 82A-1207. Board of crime control—creation—continued—transfer—composition.
- 82A-1209. References.

82A-1201. Department of justice—creation—head. There is created a department of justice. The department head is the attorney general.

History: En. 82-1201 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in the first sentence.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 3-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

82A-1202. Agencies abolished—functions transferred to department.

(1) The state bureau of criminal identification and investigation, provided for in Title 80, chapter 20, R. C. M. 1947, is abolished, and its statutory functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state bureau of criminal identification and investigation means the department of justice.

(2) The position of criminal investigator created within the office of the attorney general in Title 82, chapter 4, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of criminal investigator means the department of justice.

(3) The state law enforcement teletypewriter communications committee, provided for in Title 82, chapter 39, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the law enforcement teletypewriter communications committee means the department of justice.

(4) The Montana law enforcement academy advisory board, provided for in Title 75, chapter 52, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana law enforcement academy advisory board means the department of justice.

(5) The office of state fire marshal, created in Title 82, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state fire marshal means the department of justice.

(6) The state building code council, created in Title 69, chapter 21, R. C. M. 1947, is abolished, and its functions are transferred to the department of administration. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state building code council means the department of administration.

History: En. 82A-1202 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 211, L. 1973; amd. Sec. 7, Ch. 250, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 211 and once by Ch. 250. Neither amendatory act mentioned or in-

corporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 211, Laws of 1973, added "of

administration" to the end of the first sentence in subsection (6) and substituted "administration" for "law enforcement and public safety" at the end of the second sentence of subsection (6).

Chapter 250, Laws of 1973, substituted "justice" for "law enforcement and public safety" throughout the section.

Effective Date

Section 3 of Ch. 211, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

82A-1203. Additional functions transferred to department. (1) The functions of the state electrical board of making inspections of electrical installations and issuing tags and charging fees therefor in section 66-2805(c)(i), R. C. M. 1947, and of establishing an electrical code in section 66-2802(i), R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board relating to its functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code means the department of justice.

(2) The functions of the state controller and the department of administration, which are contained in Title 69, chapter 21, R. C. M. 1947 (pertaining to the state building code), are transferred to the department. Unless inconsistent with this act, any reference in Title 69, chapter 21, R. C. M. 1947, to the state controller or the department of administration means the department of justice.

(3) The function of the secretary of state of registering machine guns in section 94-3108, R. C. M. 1947, is transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the secretary of state relating to his function of registering machine guns means the department of justice.

History: En. 82A-1203 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" throughout the section.

Compiler's Notes

Section 94-3108, referred to in subsection (3), was redesignated section 94-8-208 by Sec. 29, Ch. 513, Laws of 1973.

82A-1204. Division of motor vehicles—creation. There is created a division of motor vehicles within the department.

History: En. 82A-1204 by Sec. 1, Ch. 272, L. 1971.

82A-1205. Agencies abolished—functions transferred to division. (1) The position of registrar of motor vehicles, trailers and semitrailers, created in Title 53, chapter 1, R. C. M. 1947, is abolished, and the functions of the position, except the function of providing license plates for motor vehicles provided for in Title 53, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles. The function of providing license plates remains a function of the warden of the state prison. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the registrar of motor vehicles, trailers and semi-

trailers, except the references relating to the function of providing license plates, means the division of motor vehicles of the department of justice.

(2) The Montana highway patrol board, provided for in Title 31, chapter 1, R. C. M. 1947, is abolished, and its functions, except the function of appointing the highway patrol chief in section 31-104, R. C. M. 1947, which is hereby transferred to the attorney general, are transferred to the division of motor vehicles. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrol board means the division of motor vehicles of the department of justice, except references in section 31-104, R. C. M. 1947, relating to the function of appointing the highway patrol chief, where it means the attorney general.

History: En. 82A-1205 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in subsections (1) and (2).

82A-1206. Functions of highway patrol and highway patrol chief transferred to division. The functions of the highway patrol, which is created in Title 31, chapter 1, R. C. M. 1947, and of the position of highway patrol chief, which is provided for in Title 31, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles.

History: En. 82A-1206 by Sec. 1, Ch. 272, L. 1971.

82A-1207. Board of crime control—creation—continued—transfer—composition. (1) The administratively created agency known as the governor's crime control commission is hereby created by law as the board of crime control, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in 82A-108. However, the board may hire its own personnel, and 82A-108(2)(d) does not apply.

(3) The board is composed of 18 members appointed by the governor in accordance with 82A-112, but 82A-112(2)(b) does not apply, and members are to be appointed in accordance with any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended. The board shall be representative of state and local law-enforcement and criminal justice agencies, including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention.

(4) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards for employment of peace officers, whose primary responsibility as authorized by law includes either the prevention and detection of crime or supervision of

the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions of agencies, to insure the public health, welfare and safety. The board may waive the minimum qualification standard for good cause shown.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977.

Amendments

The 1973 amendment added the second sentence to subsection (4).

The 1977 amendment increased the size of the board from 16 to 18 members in subsection (3); added "in accordance with 82A-112 * * * as amended" to the end of the first sentence of subsection (3); rewrote the second sentence of subsection (3) which read "The board shall be representative of state and local law enforcement agencies and units of general local government"; inserted "whose primary responsibility * * * its political subdivisions" in the second sentence of subsec-

tion (4); deleted a former subsection (5) which provided for the continuation of the governor's crime control commission prior to the effective date of this section and that members of that commission should sit as board members under this section for the remainder of the then sitting governor's term; deleted a former subsection (6) which contained provisions now incorporated into subsection (3); and made minor changes in phraseology and style.

Effective Date

Section 2 of Ch. 61, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

82A-1208. Repealed.

Repeal

Section 82A-1208 (Sec. 1, Ch. 272, L. 1971), relating to abolishment of the fire

prevention advisory commission, was repealed by Sec. 3, Ch. 519, Laws 1977.

82A-1209. References. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of law enforcement and public safety means the department of justice.

History: En. 82A-1209 by Sec. 12, Ch. 250, L. 1973.

Title of Act

An act to change the name of the department of law enforcement and public safety to the department of justice; amending sections 82A-104, 82A-202, 82A-703, 82A-802, 82A-803, 82A-1201, 82A-1202,

82A-1203, 82A-1205, 82A-1602 and 82A-1605, R. C. M. 1947; adding a new section; and providing an effective date.

Effective Date

Section 13 of Ch. 250, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 9, 1973.

CHAPTER 13—DEPARTMENT OF LIVESTOCK

Section

82A-1301. Department of livestock—creation—head.

82A-1301.1. Functions of department.

82A-1303. Board of livestock—composition.

82A-1303.1. Transition.

82A-1306. Governor to appoint committee—duties—composition—districts—nominees—term of office.

82A-1301. Department of livestock—creation—head. There is created a department of livestock. The department head is the board of livestock provided for in section 82A-1303 of this chapter.

History: En. 82A-1301 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 8-71, dated Nov. 19, 1971, effective Nov. 22, 1971.

82A-1301.1. Functions of department. The department and its units are responsible for administering laws pertaining to livestock, including, but not limited to, laws pertaining to:

- (1) Eggs and egg dealers (Title 3, chapter 23);
- (2) Dairies and dairy products (Title 3, chapter 24);
- (3) Montana quality label (Title 3, chapter 25);
- (4) Control of rodents (Title 3, chapter 27);
- (5) Dairy cattle and slaughterhouses (Title 27, chapter 1);
- (6) Preventing, controlling, and eradicating diseases of animals (Title 46, chapter 2);
- (7) Tuberculin regulation (Title 46, chapter 3);
- (8) Butchers and meat peddlers (Title 46, chapter 5);
- (9) Brands (Title 46, chapter 6);
- (10) Livestock inspectors (Title 46, chapter 7);
- (11) Inspection of livestock (Title 46, chapter 8);
- (12) Livestock markets (Title 46, chapter 9);
- (13) Estrays (Title 46, chapter 10);
- (14) Hide dealers (Title 46, chapter 11);
- (15) Livestock improvement (Title 46, chapter 12);
- (16) Fences (Title 46, chapter 14);
- (17) Bounties (Title 46, chapter 19);
- (18) Impounding livestock (Title 46, chapter 20);
- (19) Rendering plants (Title 46, chapter 24);
- (20) Artificial insemination (Title 46, chapter 25);
- (21) Feeding garbage to animals (Title 46, chapter 26);
- (22) Livestock protection (Title 46, chapter 27);
- (23) Livestock dealers (Title 46, chapter 29).

History: En. 82A-1301.1 by Sec. 197, Ch. 310, L. 1974.

82A-1302. Repealed.

Repeal

Section 82A-1302 (Sec. 1, Ch. 272, L. 1971), relating to functions of the department of agriculture and commissioner of

agriculture transferred to the department of livestock, was repealed by Sec. 201, Ch. 310, Laws of 1974.

82A-1303. Board of livestock—composition. (1) There is a board of livestock.

(2) The board consists of seven (7) members appointed by the governor with the consent of the senate. Each member shall be a resident of the state and an active livestock producer. A member shall be appointed

82A-1303.1 REORGANIZATION OF EXECUTIVE DEPARTMENT

upon the recommendation of the related industry and shall have the following qualifications:

- (a) two (2) are cattle producers, one (1) from each congressional district within the state;
- (b) two (2) are cattle producers at large;
- (c) one (1) is a dairy producer representing the dairy and poultry industry;
- (d) one (1) is a swine producer; and
- (e) one (1) is a sheep producer.

An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in section 82A-106 (2).

(3) The governor shall designate the chairman of the board.

(4) A member shall serve for a term of six (6) years.

(5) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in section 82A-112 (7) (e).

History: En. 82A-1303 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 198, Ch. 310, L. 1974; amd. Sec. 1, Ch. 393, L. 1975.

Amendments

The 1974 amendment rewrote this section which provided for continuation of the functions of and renaming the livestock commission as the board of livestock.

The 1975 amendment increased the number of board members from six to seven in

subsection (2); substituted "Each member shall be a resident of the state and an active livestock producer" in subsection (2) for "A member shall be a resident of this state and the owner of cattle, sheep, or horses in this state"; inserted the third sentence, and its subdivisions, in subsection (2); and substituted "section 82A-112(7)(e)" for "section 82A-112(1)(e)" in subsection (5).

82A-1303.1. Transition. A member of the board on the effective date of this act shall continue in office until his term expires. Upon the expiration of the term of a member, or if a member resigns or otherwise vacates his office, the governor shall appoint as a new member, or as a replacement, a person qualified under the provisions of section 82A-1303 and not then represented on the board. Each new member shall be appointed for a full term and each replacement member shall be appointed to fulfill the term of the member replaced.

History: En. 82A-1303.1 by Sec. 2, Ch. 393, L. 1975.

Title of Act

An act to amend section 82A-1303, R. C. M. 1947, to increase the membership of the board of livestock; to provide for the qualifications of members of the board; to provide for replacement of existing mem-

bers as they vacate office; and providing for an immediate effective date.

Effective Date

Section 3 of Ch. 393, Laws 1975 provided the act should be in effect from and after its passage and approval. Approved April 12, 1975.

82A-1304, 82A-1305. Repealed.

Repeal

Sections 82A-1304 and 82A-1305 (Sec. 1, Ch. 272, L. 1971), relating to abolishment of the livestock sanitary board and the

advisory committee on predatory animal control, were repealed by Sec. 201, Ch. 310, Laws of 1974.

82A-1306. Governor to appoint committee—duties—composition—districts—nominees—term of office. (1) The governor of the state of Mon-

tana shall appoint a committee to be known as the Montana pork research and marketing committee, which committee shall be composed of:

(a) Five (5) members each of whom is a citizen of Montana, and each of whom derives a substantial portion of his income from producing swine in Montana,

(b) Four *ex officio* members (who may not vote on any decisions, orders or regulations of the committee):

- (i) the commissioner of the department of agriculture,
- (ii) the dean of agriculture of Montana state university,
- (iii) administrator of brand enforcement, livestock department,
- (iv) administrator of animal health, livestock department.

(3) One member of the committee shall be appointed from each of the following districts, and shall be a resident of, and shall have swine operations in the district from which appointed:

District I. consisting of Deer Lodge, Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders, Glacier, Liberty, Pondera, Teton, Toole, Broadwater, Cascade, Lewis and Clark, Meagher, Beaverhead, Gallatin, Jefferson, Madison, and Silver Bow.

District II. consisting of Blaine, Chouteau, Hill, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Wheatland, Big Horn, Carbon, Park, Stillwater, Sweet Grass, Yellowstone.

District III. consisting of Daniels, Dawson, Garfield, McCone, Richland, Roosevelt, Sheridan, Valley, Treasure, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Wibaux, and Phillips.

(4) Two (2) members of the committee shall be appointed at large.

(5) A list of nominees for appointment to the committee may be submitted to the governor by any farm or ranch organization which has substantial numbers of its membership actively engaged in swine production. Each nominee must be from the district for which the appointment shall be made except for the at large nominees. The first list of nominees shall be submitted in less than thirty-one (31) days after the effective date of this act and thereafter names of nominees shall be submitted not less than ninety-one (91) days prior to the expiration of any committee member's term.

(6) Committee members shall be appointed for a term of five (5) years, except that the terms of office of the committee members first appointed shall be as follows:

- (a) District I for four (4) years;
- (b) District II for three (3) years;
- (c) District III for two (2) years;
- (d) At large No. 1 for five (5) years;
- (e) At large No. 2 for one (1) year.

(7) Members appointed to fill unexpired terms shall be appointed for the remainder of the unexpired term.

(8) The committee is allocated to the department of livestock for administrative purposes only as provided in section 82A-108.

History: En. 82A-1306 by Sec. 3, Ch. 484, L. 1975.

CHAPTER 14—DEPARTMENT OF MILITARY AFFAIRS

Section

82A-1401. Department of military affairs—head.

82A-1405. Adjutant general—qualifications—salary—acting adjutant general.

82A-1406. Assistant adjutant generals.

82A-1401. Department of military affairs—head. There is a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in section 82A-106. In addition, the adjutant general shall have the qualifications as prescribed in section 82A-1405.

History: En. 82A-1401 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 70, Ch. 94, L. 1974. for "section 77-117, R. C. M. 1947"; and made minor changes in phraseology.

Executive Implementation**Amendments**

The 1974 amendment substituted "section 82A-1405" at the end of the section

This chapter was implemented by Executive Reorganization Order 1-71, dated June 25, 1971, effective July 1, 1971.

82A-1402 to 82A-1404. Repealed.**Repeal**

Sections 82A-1402 to 82A-1404 (Sec. 1, Ch. 272, L. 1971), relating to abolition of

military affairs agencies and transfer of functions, were repealed by Sec. 73, Ch. 94, Laws of 1974.

82A-1405. Adjutant general — qualifications — salary—acting adjutant general. (1) The adjutant general shall:

- (a) Have the rank of major general;
- (b) Be selected from the active list of the national guard of this state;
- (c) Be federally recognized in the rank of lieutenant colonel or higher, immediately preceding his appointment;
- (d) Have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately preceding his appointment.

(2) A salary may not be paid to the adjutant general by the state, when he is on extended active duty in federal service, or is receiving pay as a civilian employee of the federal government.

(3) If, by reason of call or draft of officers of the Montana national guard into federal service, there is no officer having the qualifications as set forth in this section for adjutant general, then any officer of the national guard may be appointed as acting adjutant general.

History: En. 82A-1405 by Sec. 71, Ch. 94, L. 1974.

82A-1406. Assistant adjutant generals. (1) The adjutant general shall appoint, with the approval of the governor, an assistant adjutant general for the army national guard to be selected from the active list of the army national guard, and an assistant adjutant general for the air national guard to be selected from the active list of the air national guard.

(2) Each assistant adjutant general shall have the qualifications set forth in section 82A-1405 for appointment as adjutant general. However, they shall have the rank of brigadier general.

History: En. 82A-1406 by Sec. 72, Ch. 94, L. 1974.

Repealing Clause

Section 73 of Ch. 94, Laws 1974 read "Sections 32-1701, 77-101 through 77-163,

77-201 through 77-214, 77-301, 77-401 through 77-420, 77-1101, 77-1201 through 77-1215, 77-1301, 77-1305, 77-1501, 77-1504, 82-207 through 82-211, 82A-1402 through 82A-1404, R. C. M. 1947, are repealed."

**CHAPTER 15—DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION**

Section

82A-1501. Department of natural resources and conservation—creation—head.

82A-1501.1. Functions of department.

82A-1508. Board of oil and gas conservation—composition—allocation—designation.

82A-1509. Board of natural resources and conservation—creation—composition—designation.

82A-1501. Department of natural resources and conservation—creation—head. There is a department of natural resources and conservation. The department head is the director of natural resources and conservation appointed by the governor in accordance with section 82A-106.

History: En. 82A-1501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 114, Ch. 253, L. 1974.

section for "provided for in section 82A-1508 of this chapter"; and made a minor change in phraseology.

Amendments

The 1974 amendment substituted "appointed by the governor in accordance with section 82A-106" at the end of the

Executive Implementation

This chapter was implemented by Executive Reorganization Order 14-71, dated Dec. 17, 1971, effective Dec. 20, 1971.

82A-1501.1. Functions of department. The department and its units are responsible for administering laws pertaining to natural resources, including, but not limited to, laws pertaining to:

- (1) Forests and forestry (Title 28, chapter 1);
- (2) Disposal of slashings and forest debris (Title 28, chapter 4);
- (3) Portable sawmill regulation (Title 28, chapter 8);
- (4) Grass conservation (Title 46, chapter 23);
- (5) Conservation of oil and gas (Title 60, chapter 1);
- (6) Underground gas storage (Title 60, chapter 8);
- (7) Utility sites (Title 70, chapter 8);
- (8) Soil and water conservation (Title 76, chapter 1);
- (9) State forests (Title 81, chapter 14);
- (10) Water for state lands (Title 81, chapter 20);
- (11) Water resources (Title 89, chapter 1);
- (12) Weather modification (Title 89, chapter 3);
- (13) Water conservation moneys (Title 89, chapter 4);
- (14) Examination of dams and reservoirs (Title 89, chapter 7);
- (15) Water rights (Title 89, chapter 8);
- (16) Yellowstone river compact (Title 89, chapter 9);
- (17) Irrigation districts (Title 89, chapter 12);

(18) Regulation of groundwater (Title 89, chapter 29);

(19) Conservancy districts (Title 89, chapter 34).

History: En. 82A-1501.1 by Sec. 115, Ch. 253, L. 1974.

82A-1502 to 82A-1506. Repealed.

Repeal

Sections 82A-1502 to 82A-1506 (Sec. 1, Ch. 272, L. 1971), relating to abolition of natural resources agencies, transfer of

functions, and creation of the divisions of water resources, forestry, and conservation districts, were repealed by Sec. 108, Ch. 253, Laws of 1974.

82A-1507. Repealed.

Repeal

Section 82A-1507 (Sec. 1, Ch. 272, L. 1971), relating to the continuation of the

state soil conservation committee, was repealed by Sec. 2, Ch. 188, Laws 1973.

82A-1507.1. Repealed.

Repeal

Section 82A-1507.1 (Sec. 1, Ch. 188, L. 1973), relating to the abolition of the

state conservation committee, was repealed by Sec. 108, Ch. 253, Laws of 1974.

82A-1508. Board of oil and gas conservation—composition—allocation—designation. (1) There is a board of oil and gas conservation.

(2) The board consists of five (5) members, two (2) of whom shall be from the oil and gas industry and have had at least three (3) years' experience in the production of oil and gas.

(3) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112.

History: En. 82A-1508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 116, Ch. 253, L. 1974.

Amendments

The 1974 amendment substituted subsection (1) for a subsection reading "(1) The oil and gas conservation commission of the state of Montana, created in Title 60, chapter 1, R. C. M. 1947, and its functions are continued, and the commission

is renamed the board of oil and gas conservation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the oil and gas conservation commission of the state of Montana means the board of oil and gas conservation"; inserted subsection (2); redesignated former subsections (2) and (3) as subsections (3) and (4) respectively; and made minor changes in phraseology.

82A-1509. Board of natural resources and conservation—creation—composition—designation. (1) There is a board of natural resources and conservation.

(2) The board is composed of seven (7) members, appointed by the governor as prescribed in section 82A-112, informed and experienced in the subjects of natural resources and conservation.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(5) In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity to the department in all other matters.

History: En. 82A-1509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 384, L. 1973; amd. Sec. 117, Ch. 253, L. 1974.

Amendments

The 1973 amendment increased the number of members of the board from five to seven in subsection (2); and added the second sentence to subsection (2).

The 1974 amendment deleted from the end of subsection (2) two sentences which read "One member shall be appointed from each of the five (5) districts prescribed in section 26-102(1), R. C. M. 1947. The other two (2) members are members at large"; added subsections (4) and (5); and made minor changes in phraseology.

82A-1510 to 82A-1512. Repealed.

Repeal

Sections 82A-1510 to 82A-1512 (Sec. 1, Ch. 272, L. 1971; Sec. 1, Ch. 77, L. 1973), relating to the abolition of natural re-

sources agencies and the creation of the director of natural resources and conservation, were repealed by Sec. 108, Ch. 253, Laws of 1974.

CHAPTER 16—DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Section

- 82A-1601. Department of professional and occupational licensing—creation—head.
- 82A-1602. Department—agencies allocated to.
- 82A-1602.1. Board of abstracters—appointment—qualifications—term.
- 82A-1602.2. Board of public accountants—appointment—qualifications—term.
- 82A-1602.3. Board of architects—appointment—qualifications—term.
- 82A-1602.4. Board of athletics—appointment—qualifications—term.
- 82A-1602.5. Board of barbers—appointment—qualifications—term.
- 82A-1602.6. Board of podiatry examiners—appointment—qualifications—term.
- 82A-1602.7. Board of chiropractors—appointment—qualifications—term.
- 82A-1602.8. Board of cosmetologists—appointment—qualifications—term.
- 82A-1602.9. Board of dentists—appointment—qualifications—term.
- 82A-1602.10. State electrical board.
- 82A-1602.11. Board of professional engineers and land surveyors—appointment—qualifications—removal—term.
- 82A-1602.12. Board of hearing aid dispensers—appointment—qualifications—term.
- 82A-1602.13. Board of horse racing created—appointment—removal.
- 82A-1602.14. Board of massage therapists—appointment—qualifications—term.
- 82A-1602.15. Montana state board of medical examiners—appointment—qualifications—term—removal.
- 82A-1602.16. Board of morticians—appointment—qualifications—term.
- 82A-1602.17. Board of nursing home administrators—appointment—qualifications—term—removal.
- 82A-1602.18. Board of nursing—appointment—qualifications—term—removal.
- 82A-1602.19. Board of optometrists—appointment—qualifications—term.
- 82A-1602.20. Board of osteopathic physicians—appointment—qualifications—term.
- 82A-1602.21. Board of pharmacists—appointment—qualifications—term.
- 82A-1602.22. Board of plumbers—appointment—qualifications—term.
- 82A-1602.23. Board of real estate—appointment—qualifications—term.
- 82A-1602.24. Board of veterinarians—appointment—qualifications—term—removal.
- 82A-1602.26. Board of water well contractors—appointment—qualifications—term.
- 82A-1602.27. Board of psychologists—appointment—qualifications—term.
- 82A-1602.28. Board of radiologic technologists—composition—terms.
- 82A-1602.29. Board of warm air heating, ventilation, and air conditioning—appointment—qualifications—term.
- 82A-1602.30. Board created.

82A-1601 REORGANIZATION OF EXECUTIVE DEPARTMENT

- 82A-1602.31. Board of speech pathologists and audiologists—appointment—qualifications.
82A-1603. Department—duties.
82A-1604. Director—duties.
82A-1605. Boards within department—duties.
82A-1606. Board within department—composition, etc.
82A-1607. Electrical inspections and code making.

82A-1601. Department of professional and occupational licensing—creation—head. There is created a department of professional and occupational licensing. The department head is a director of professional and occupational licensing appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-1601 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 2-72, dated July 31, 1972, effective Aug. 1, 1972.

82A-1602. Department—agencies allocated to. The agencies provided for in sections 82A-1602.1 through 82A-1602.27, are allocated to the department for administrative purposes only as prescribed in section 82A-108.

History: En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974.

Compiler's Notes

This section was amended five times in 1974, once each by the following: Ch. 57, Ch. 58, Ch. 84, Ch. 99, and Ch. 350. None of the amendatory acts mentioned or incorporated the others. The first four amendments were changes in the names of boards. Ch. 350 then amended the preliminary paragraph, and deleted subdivisions (1) through (26). Sections 82A-1602.1 to 82A-1602.27, referred to in the present section, embody the substance of the deleted subdivisions.

Amendments

Chapter 250, Laws 1973, substituted "justice" for "law enforcement and public safety" in subsection (10).

Chapter 285, Laws of 1973, inserted in the first sentence of subdivision (6) the

citation to the Laws of 1971 and the clause again renaming the board; inserted "or the board of chiropodists" in the second sentence of subdivision (6); substituted "state board of podiatry examiners" for "board of chiropodists" at the end of subdivision (6); inserted in the first sentence of subdivision (15) the citation to the Laws of 1971 and the clause restoring the previous name; and reversed references to the "Montana state board of medical examiners" and to the "board of medical doctors" in the second sentence of subdivision (15).

Chapter 57, Laws of 1974, changed the name of the board of masseurs to the board of massage examiners. Chapter 58, Laws of 1974, changed the name of the board of osteopaths to the board of osteopathic examiners. Chapter 84, Laws of 1974, changed the name of the board of electricians to the state electrical board. Chapter 99, Laws of 1974, changed the name of the board of nurses to the board of nursing.

Chapter 350, Laws of 1974, rewrote this section in its present form. See Compiler's Notes.

82A-1602.1. Board of abstracters—appointment—qualifications—term.
(1) There is a board of abstracters.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a registered abstracter during his term. Members shall be from different counties.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 2, Ch. 105, L. 1931; Sec. 66-2102, R. C. M. 1947; amd. and redes. 82A-1602.1 by Sec. 194, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section; and rewrote the text to delete specific provisions pertaining to the requirements for appointment of the members.

82A-1602.2. Board of public accountants—appointment—qualifications—term. (1) There is a board of public accountants.

(2) The board consists of five (5) members appointed by the governor. The members are:

(a) three (3) certified public accountants certified under section 66-1819 who have been certified and actively engaged in the practice of public accounting for at least five (5) years before their appointment. The Montana society of certified public accountants shall submit to the governor biennially a list of names of two (2) candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) two (2) public accountants licensed under section 66-1820 who have been actively engaged in the practice of public accounting for at least five (5) years before their appointment. The Montana society of public accountants shall submit to the governor biennially a list of names of two (2) candidates from which the appointment of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(3) All members shall be residents of this state and citizens of the United States, and hold current licenses under section 66-1833. The governor shall remove any member whose license to practice has become void, revoked, or suspended, or who ceases to be engaged in the practice of public accounting.

(4) Each member shall serve for a term of six (6) years. A member who has served two (2) successive complete terms is not eligible for reappointment until after the lapse of one (1) year. The governor may, after a hearing, remove a member for neglect of duty or other just cause.

History: En. Sec. 1, Ch. 118, L. 1969; Sec. 66-1813, R. C. M. 1947; amd. and redes. 82A-1602.2 by Sec. 161, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section and rewrote the text. For prior version, see section 66-1813 in the parent volume.

82A-1602.3. Board of architects — appointment — qualifications — term. (1) There is a board of architects.

(2) The board consists of three (3) members, appointed by the governor with the consent of the Senate. Each member shall be a skilled and a capable architect, who has been in continuous practice for three (3) years before his appointment. Not more than two (2) members shall be residents of the same county.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 1, Ch. 158, L. 1917; re-en. Sec. 3229, R. C. M. 1921; amd. Sec. 1, Ch. 439, L. 1973; Sec. 66-101, R. C. M. 1947; amd. and redes. 82A-1602.3 by Sec. 24, Ch. 350, L. 1974.

Amendments

The 1973 amendment inserted the first sentence of the second paragraph; and substituted "After the expiration of these initial terms, members shall serve three (3) year terms" for "The architects so appointed shall hold their respective offices for term of four years" at the beginning of the second sentence of the second paragraph.

The 1974 amendment renumbered and rewrote this section. Prior to amendment it read: "Within thirty days after the passage of this act, the governor, with the consent and advice of the senate, shall appoint three skilled and capable architects, who shall have been residents of

the state of Montana for not less than three years prior to their appointment, not more than two of whom shall be residents of the same county, and who shall have been in continuous practice of the profession for three years, who shall constitute the board of architectural examiners for the purpose of this act.

"Of the members appointed to terms beginning on March 27, 1973, one (1) member shall be appointed for a one (1) year term, one (1) member shall be appointed for a two (2) year term, and one (1) member shall be appointed for a three (3) year term. After the expiration of these initial terms, members shall serve three (3) year terms. All vacancies shall be filled in like manner as the appointments are made. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session."

82A-1602.4. Board of athletics—appointment—qualifications—term. (1) There is a board of athletics.

- (2) The board consists of three (3) members appointed by the governor.
- (3) Each member shall serve for a term of three (3) years.

History: En. 82A-1602.4 by Sec. 355, Ch. 350, L. 1974.

82A-1602.5. Board of barbers—appointment—qualifications—term. (1) There is a board of barbers.

- (2) The board consists of three (3) members appointed by the governor. Each member shall be a practicing barber who has been a barber in this state for at least five (5) years immediately before his appointment.
- (3) Each member shall serve for a term of three (3) years. The governor may remove a member for cause.

History: En. Sec. 6, Ch. 127, L. 1929; Sec. 66-406, R. C. M. 1947; amd. and redes. 82A-1602.5 by Sec. 33, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-406 in the parent volume.

82A-1602.6. Board of podiatry examiners—appointment—qualifications—term. (1) There is a board of podiatry examiners.

- (2) The board consists of three members, all of whom are licensed podiatrists appointed by the governor to 3-year terms, selected from a list of six podiatrists submitted by the Montana association of podiatrists. The members shall be residents of this state who have engaged in the active practice of podiatry in this state for at least 2 years and are of high integrity and ability. The governor shall fill a vacancy on the board from the same list of podiatrists.

History: En. 82A-1602.6 by Sec. 356, Ch. 350, L. 1974; amd. Sec. 4, Ch. 176, L. 1977.

Amendments

The 1977 amendment reduced the size of the board from five to three members

by removing from it the secretary of, and one physician selected by the state board of medical examiners; and made minor changes in phraseology and style.

Effective Date

Section 5 of Ch. 176, Laws 1977 read "This act is effective on April 1, 1978."

82A-1602.7. Board of chiropractors—appointment—qualifications—term. (1) There is a board of chiropractors.

(2) The board consists of three (3) members appointed by the governor. The members shall be practicing chiropractors of integrity and ability who shall be residents of this state, and who have practiced chiropractic continuously in this state for at least one (1) year. No two (2) members shall be graduates of the same school or college of chiropractic.

(3) Each member shall serve for a term of three (3) years. No member may be appointed for more than two consecutive terms. A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3138, R. C. M. 1921; Sec. 66-501, R. C. M. 1947; amd. and redes. 82A-1602.7 by Sec. 45, Ch. 350, L. 1974; amd. Sec. 2, Ch. 579, L. 1977.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-501 in the parent volume.

The 1977 amendment inserted the second sentence in subsection (3).

82A-1602.8. (3228.4) Board of cosmetologists—appointment—qualifications—term. (1) There is a board of cosmetologists.

(2) The board consists of three members who may be appointed by the governor from a list of six persons recommended by the Montana state hairdressers' association. Each member appointed shall have actively engaged in the profession of cosmetology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No two members of the board may be members of or affiliated with a school of cosmetology.

(3) Each member shall serve for a term of 4 years.

History: En. Sec. 4, Ch. 104, L. 1929; amd. Sec. 4, Ch. 222, L. 1939; amd. Sec. 4, Ch. 244, L. 1961; Sec. 66-804, R. C. M. 1947; redes. 82A-1602.8 and amd. by Sec. 1, Ch. 196, L. 1973; amd. Sec. 1, Ch. 511, L. 1977.

Amendments

The 1973 amendment renumbered this section, formerly 66-804; rewrote the section, changing the name of the board from "state examining board of cosmetology" to "board of cosmetologists"; increased the number of cosmetologist members from three to four; increased the number of persons to be recommended by the Montana state hairdressers' association from six to

eight; and added the provision for the appointment of the attorney member to the board.

The 1977 amendment substituted "three members who may be appointed by the governor from a list of six" near the beginning of subsection (2) for "four (4) members appointed by the governor from a list of eight (8)"; reduced the age provision from 25 to 18 in the third sentence of subsection (2); deleted a sentence at the end of subsection (2) reading "The governor shall appoint a fifth member to the board who shall be an attorney licensed to practice law in the state"; and made minor changes in phraseology, punctuation and style.

82A-1602.9. Board of dentists—appointment—qualifications—term. (1) There is a board of dentists.

82A-1602.10 REORGANIZATION OF EXECUTIVE DEPARTMENT

(2) The board consists of five (5) members appointed by the governor. The Montana state dental association shall present to the governor, within fifteen (15) days after its regular annual meeting, a list of not less than five (5) candidates from which appointments for vacancies on the board occurring during the ensuing year may be made. At all times at least three (3) members of the board shall be appointed from the list of candidates submitted by the Montana state dental association. Each member shall be licensed to practice dentistry in this state and shall have actively practiced dentistry in this state for at least five (5) continuous years immediately before his appointment. Each member shall be a citizen of the United States, and a resident of this state.

(3) Each member shall serve for a term of five (5) years. The governor may remove a member only for neglect or cause.

History: En. Sec. 1, Ch. 48, L. 1935; Sec. 66-901, R. C. M. 1947; amd. and redes. 82A-1602.9 by Sec. 76, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-901 in the parent volume.

82A-1602.10. State electrical board. (1) There is a state electrical board.

(2) The board consists of five (5) members, appointed by the governor, with the consent of the senate, who shall be residents of this state. One (1) member of the board shall represent the public. One (1) member of the board shall be selected from each of the following four (4) groups, from three (3) names submitted by each group:

- (a) Consumer members of rural electric co-operatives;
- (b) Master licensed electrical contractors;
- (c) Licensed journeyman electricians; and
- (d) Investor-owned electric utilities.

(3) The members of the board shall serve for a term of five (5) years with their terms of office so arranged that one (1) term expires on July 1 of each year.

(4) Each member of the board shall receive twenty-five dollars (\$25) per day for each day served in the discharge of his duties, together with travel expenses, as provided for in sections 59-538, 59-539, and 59-801, incurred in the performance of his duties.

(5) A majority of the members of the board shall constitute a quorum for transaction of business.

History: En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R. C. M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975.

Amendments

The 1973 amendment rewrote this section. For former version, see sec. 66-2804 in the parent volume.

The 1974 amendment renumbered this section; substituted references to the state electrical board throughout for

references to the board of electricians; inserted the subsection designations; deleted "The members of the board shall be appointed within twenty (20) days after the effective date of this act for one (1), two (2), three (3), four (4), and five (5) years, respectively, as determined by the governor" at the beginning of subsection (3); deleted "Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member" at the beginning of subsection (4); deleted

"all to be paid out of the electricians' fund herein created" at the end of subsection (4); and made minor changes in style, punctuation and phraseology.

The 1975 amendment substituted "travel expenses, as provided for in sections 59-538, 59-539, and 59-801" in subsection (4) for "the actual and necessary expenses."

82A-1602.11. Board of professional engineers and land surveyors—appointment—qualifications—removal—term. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of seven (7) members appointed by the governor. The members are:

(a) Five (5) professional engineers who have been engaged in the practice of engineering for at least twelve (12) years, and who have been in responsible charge of engineering teaching or important engineering work for at last five (5) years, and registered in Montana for at least five (5) years. No more than two (2) of these members may be from the same branch of engineering.

(b) Two (2) registered and practicing land surveyors who have been engaged in the practice of land surveying for at least twelve (12) years, and who have been in responsible charge of land surveying or important land surveying work for at least five (5) years, and registered in Montana for at least five (5) years.

(3) Each member shall be a citizen of the United States, and a resident of this state. A member, after serving two (2) consecutive terms shall not be reappointed for a period of two (2) years.

(4) Each member shall serve for a term of five (5) years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

History: En. Sec. 4, Ch. 150, L. 1957; amd. Sec. 2, Ch. 282, L. 1969; Sec. 66-2327, R. C. M. 1947; amd. and redes. 82A-1602.11 by Sec. 215, Ch. 350, L. 1974; amd. Sec. 1, Ch. 366, L. 1975.

for "or responsible charge of engineering teaching" in subdivision (2)(a); added "who have been engaged in the practice * * * in Montana for at least five (5) years" to subdivision (2)(b); deleted a second sentence in subsection (3) which read "Each newly appointed member shall have qualifications similar to the member whose term has expired"; and substituted the third sentence of subsection (3) for one which read "A member may not serve more than two (2) consecutive terms."

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-2327 in the parent volume.

The 1975 amendment inserted "engineering teaching or" in subdivision (2)(a); substituted "and registered in Montana"

82A-1602.12. Board of hearing aid dispensers—appointment—qualifications—term. (1) There is a board of hearing aid dispensers.

(2) The board consists of five (5) members appointed by the governor. The members are:

(a) One (1) member appointed from a list submitted by the Montana academy of oto-ophthalmology. This member shall hold or be eligible for a certificate of qualification from the American board of otolaryngology.

(b) One (1) member appointed from a list submitted by the Montana speech and hearing association. This member shall hold or be eligible for a certificate of clinical competence in audiology from the American speech and hearing association.

(c) Three (3) members appointed from a list submitted by the Montana hearing aid dealers' society. These members shall have been qualified dispensers and fitters of hearing aids for at least five (5) years before their appointment to the board.

(d) One (1) alternate member shall be appointed from each of the three (3) lists to serve when a regular member cannot attend a scheduled meeting.

(3) Each member shall serve for a term of three (3) years. A member may not be reappointed within one (1) year after the expiration of his second consecutive full term. If a vacancy occurs on the board, the governor shall appoint a person from the same list as the member whose term was not completed.

History: En. Sec. 4, Ch. 204, L. 1969; Sec. 66-3004, R. C. M. 1947; amd. and redes. 82A-1602.12 by Sec. 293, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-3004 in the parent volume.

82A-1602.13. Board of horse racing created—appointment—removal.

(1) There is a board of horse racing.

(2) The board consists of five (5) members, appointed by the governor with the consent of the senate, who shall be citizens, residents and qualified electors of this state. At least one (1) member shall be a breeder of racing horses; one (1) member shall be a member of an independent horse racing association; one (1) member shall be a member of a county fair board that conducts a fair featuring parimutuel betting; and two (2) members shall have occupations unrelated to horse racing.

(3) The governor shall not appoint any member who resides in the same county as a current member. The governor shall appoint members on the basis of experience, qualifications, and a reasonable geographical balance throughout the state.

(4) Each member shall serve for a term of three (3) years. A member may be removed from office by the governor only for cause.

History: En. Sec. 1, Ch. 196, L. 1965; amd. Sec. 1, Ch. 457, L. 1973; Sec. 62-501, R. C. M. 1947; amd. and redes. 82A-1602.13 by Sec. 12, Ch. 350, L. 1974.

Amendments

The 1973 amendment substituted "board of horse racing" or "board" for "Montana horse racing commission" wherever it appeared in the section; increased the number of members of the board from three to five; substituted "at least one (1) member shall be a breeder of racing horses; one (1) member shall be a member of an independent horse racing association; and one (1) shall be a member of a county fair board that conducts a fair featuring parimutuel betting; and two (2) shall have occupations unrelated to horse racing" for "At least one (1) member shall be a breeder of thoroughbred or quarter horses" in the first paragraph; inserted the second

and third paragraphs; and made minor changes in phraseology.

The 1974 amendment renumbered this section; inserted "appointed by the governor with the consent of the senate" in subsection (2); deleted "After January 1, 1974, the governor shall appoint two (2) members for terms to expire in 1977 and one (1) member for a term to expire in 1976. Upon the expiration of the terms of members the governor shall appoint successors to the board for terms of three (3) years. The senate shall consent and concur in the appointments. This act does not affect the terms of office of the present board" before subsection (3); deleted "Each member shall hold office until his successor is appointed and qualified. Vacancies on the board shall be filled by appointment to be made by the governor for the unexpired term" before subsection (4); substituted "only for cause" at

the end of subsection (4) for "for cause after a public hearing" and deleted "Notice of the hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing

shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for the hearing"; and made minor changes in style and phraseology.

82A-1602.14. Board of massage therapists—appointment—qualifications—term. (1) There is a board of massage therapists.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a resident of this state, and shall have been a masseur continuously in this state for at least one (1) year. Each member shall have integrity and ability as a masseur.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 3, Ch. 302, L. 1967; Sec. 66-2903, R. C. M. 1947; amd. and redes. 82A-1602.14 by Sec. 284, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-2903 in the parent volume.

82A-1602.15. Montana state board of medical examiners—appointment—qualifications—term—removal. (1) There is a Montana state board of medical examiners.

(2) The board consists of seven (7) members appointed by the governor, with the consent of the senate. Appointments made when the senate is not in session may be confirmed at the next senate session. The members are: six (6) members having the degree of doctor of medicine, and one (1) member having the degree of doctor of osteopathy. The members having the degree of doctor of medicine may not be from the same county. Each member shall be a citizen of the United States. Each member shall have been licensed and shall have practiced medicine in this state for at least five (5) years, and shall have been a resident of this state for at least five (5) years; however, the five (5) year requirement of practice and residency shall be waived for the initial term appointment of the member having the degree and license of doctor of osteopathy.

(3) Each member shall serve for a term of seven (7) years. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

History: En. Sec. 4, Ch. 338, L. 1969; amd. Sec. 2, Ch. 203, L. 1971; Sec. 66-1013, R. C. M. 1947; amd. and redes. 82A-1602.15 by Sec. 92, Ch. 350, L. 1974; amd. Sec. 1, Ch. 83, L. 1975.

Amendments

The 1971 amendment changed the fourth sentence so as to substitute a doctor of osteopathy for one of the seven doctors of medicine; inserted "except for the member having the degree of doctor of osteopathy" before "shall be from the same county" in the fourth sentence; and inserted new fifth and sixth sentences, relating to the initial appointment of a doctor of osteopathy.

The 1974 amendment renumbered this section; and deleted much of the original section, relating to the abolishment of the old board, initial terms of office for the new board, vacancies in office, the oath of office, and appointments made when the senate is not in session. For prior version, see parent volume, section 66-1013, and the 1971 amendment note.

The 1975 amendment added at the end of subsection (2) "however, the five (5) year requirement of practice and residency shall be waived for the initial term appointment of the member having the degree and license of doctor of osteopathy."

82A-1602.16 REORGANIZATION OF EXECUTIVE DEPARTMENT

82A-1602.16. Board of morticians—appointment—qualifications—term.

(1) There is a board of morticians.

(2) The board consists of six members appointed by the governor, with the consent of the senate. Five members shall be licensed morticians. One member shall be a representative of the public who is not engaged in the practice of mortuary science or funeral directing.

(3) Each member shall serve for a term of 5 years.

(4) The public member may not participate in administering license examinations and mortuary inspections.

History: En. Sec. 2, Ch. 41, L. 1963; Sec. 66-2702, R. C. M. 1947; amd. and redes. 82A-1602.16 by Sec. 261, Ch. 350, L. 1974; amd. Sec. 1, Ch. 233, L. 1977.

Amendments

The 1974 amendment renumbered this section; deleted the former last three sentences relating to initial terms and replacement appointments (see parent vol-

ume, section 66-2702); added subsection (3); and made minor changes in phraseology.

The 1977 amendment increased the board members from five to six in the first sentence of subsection (2); added the third sentence of subsection (2); added subsection (4); and made minor changes in phraseology and style.

82A-1602.17. Board of nursing home administrators—appointment—qualifications—term—removal. (1) There is a board of nursing home administrators.

(2) The board consists of five (5) voting members appointed by the governor. No more than two (2) members shall be nursing home administrators. The other three (3) members shall be representatives of professions or institutions concerned with the care of chronically ill and infirm aged patients. No two (2) of the latter shall be from the same profession and none may have a financial interest in a nursing home.

(3) The director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, are ex officio, nonvoting members of the board.

(4) The appointees shall be selected from a list of three (3) nominees submitted for each appointee by the board of directors of the Montana Nursing Home Association, Inc.

(5) Each appointed member shall serve for a term of five (5) years. Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term from a list of three (3) names submitted by the board of directors of the Montana Nursing Home Association, Inc.

(6) Appointive members may be removed by the governor only for cause.

(7) The first board shall be appointed as follows:

(a) one nonnursing home administrator representative for one (1) year,

(b) one nonnursing home administrator representative for two (2) years,

(c) one nursing home administrator for three (3) years,

(d) one nonnursing home administrator representative for four (4) years, and

(e) one nursing home administrator for five (5) years.

History: En. Sec. 2, Ch. 363, L. 1969; amd. Sec. 1, Ch. 434, L. 1973; amd. Sec. 2, Ch. 483, L. 1973; amd. Sec. 1, Ch. 153, L. 1974; Sec. 66-3102, R. C. M. 1947; amd. and redes. 82A-1602.17 by Sec. 306, Ch. 350, L. 1974; amd. Sec. 1, Ch. 95, L. 1975.

Compiler's Notes

Sections 2 and 3 of Ch. 95, Laws 1975, dissolved the then existing board, authorized the appointment of incumbent board members to the new board, and directed that the terms of the first members of the new board be determined by lot.

Amendments

The 1973 amendment by both Ch. 434 and Ch. 483 inserted "voting" in the first sentence; inserted the second and third sentences in the first paragraph; substituted "the director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee" for "the executive officer of the Montana state department of health, or his designee and the administrator of the Montana state department of public

welfare or his designee"; and made minor changes in phraseology.

The 1974 amendment renumbered this section; organized and designated the subsections; added "appointed by the governor" in the first sentence of subsection (2); increased the term of an appointive member from three to five years; deleted "and they shall serve staggered terms with no more than two (2) terms expiring each year" at the end of the first sentence of subsection (5); substituted "only for cause" at the end of subsection (6) for "for cause after due notice and hearing"; deleted a final sentence which read "No person shall be eligible for appointment as a nursing home administrator member unless he is the holder of a license as a nursing home administrator"; and made minor changes in phraseology.

The 1975 amendment added subsection (7).

Effective Date

Section 4 of Ch. 95, Laws 1975 provided the act should be effective from and after its passage and approval. Approved March 19, 1975.

82A-1602.18. Board of nursing—appointment—qualifications—term—removal. (1) There is a board of nursing.

(2) The board consists of eight (8) members appointed by the governor. The members are:

(a) Five (5) registered professional nurses which constitute the board—professional nursing administration. Each member shall: (i) be a graduate of an approved school of nursing; (ii) be a licensed nurse in this state; (iii) have had at least five (5) years' experience in nursing following graduation; and (iv) have been actively engaged in nursing for at least three (3) years immediately before appointment. At least three (3) members shall have had at least three (3) years in administrative, teaching, or supervisory experience in schools of nursing.

(b) Three (3) practical nurses which constitute the board—practical nursing administration. Each member shall: (i) be a graduate of a school of practical nursing; (ii) be a licensed practical nurse in this state; (iii) have had at least three (3) years' experience as a practical nurse; and (iv) have been actively engaged in the practice of practical nursing for at least two (2) years immediately before appointment.

(3) All members shall have been residents of this state for at least one (1) year before appointment, and be citizens of the United States.

(4) All members shall serve for a term of five (5) years, and a member may not be appointed for more than two (2) consecutive terms. The governor may remove a member from the board for neglect of a duty re-

82A-1602.19 REORGANIZATION OF EXECUTIVE DEPARTMENT

quired by law, or for incompetency, or unprofessional or dishonorable conduct.

History: En. 82A-1602.18 by Sec. 357, Ch. 350, L. 1974.

82A-1602.19. Board of optometrists — appointment — qualifications — term. (1) There is a board of optometrists.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a registered optometrist of this state and actually engaged in the exclusive practice of optometry in this state during his term of office.

(3) Each member shall serve for a term of six (6) years.

History: En. 82A-1602.19 by Sec. 358, Ch. 350, L. 1974.

82A-1602.20. Board of osteopathic physicians—appointment—qualifications—term. (1) There is a board of osteopathic physicians.

(2) The board consists of three (3) members appointed by the governor. Each member shall be a qualified practicing resident osteopath and a graduate of a legally authorized school of osteopathy.

(3) Each member shall serve for a term of four (4) years.

History: En. Sec. 1, p. 48, L. 1901; rep. and re-en. Sec. 1, Ch. 51, L. 1905; re-en. Sec. 1594, Rev. C. 1907; re-en. Sec. 3125, R. C. M. 1921; Sec. 66-1401, R. C. M. 1947; amd. and redes. 82A-1602.20 by Sec. 140, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered this section; and rewrote it to reflect the new name of the board and to delete material relating to terms of office on the original board. For prior version, see section 66-1401 in the parent volume.

82A-1602.21. Board of pharmacists—appointment—qualifications—term. (1) There is a board of pharmacists.

(2) The board consists of three (3) members appointed by the governor. The governor shall appoint the members from a list submitted annually by the Montana state pharmaceutical association. The list shall contain the names of five (5) qualified persons for each appointment. Each member shall be a graduate of the college of pharmacy of the university of Montana, or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy. Each member shall have at least five (5) consecutive years of practical experience as a pharmacist immediately before his appointment. However, one (1) member may be a registered pharmacist of fifteen (15) years' practical experience and actually engaged in the practice of pharmacy. A member who, during his term of office, ceases to be actively engaged in the practice of pharmacy in this state, shall be automatically disqualified from membership on the board.

(3) Each member shall serve for a term of three (3) years. A member shall be removed from office by the governor on proof of malfeasance or misfeasance in office, after reasonable notice of charges against him and after a hearing.

History: En. Sec. 643, Pol. C. 1895; 4, Ch. 134, L. 1915; re-en. Sec. 3173, re-en. Sec. 1625, Rev. C. 1907; re-en. Sec. R. C. M. 1921; amd. Sec. 3, Ch. 175, L.

1939; Sec. 66-1503, R. C. M. 1947; amd. and redes. 82A-1602.21 by Sec. 149, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-1503 in the parent volume.

82A-1602.22. Board of plumbers—appointment—qualifications—term.

(1) There is a board of plumbers.

(2) The board consists of seven (7) members appointed by the governor. The members are:

(a) Two (2) master plumbers and two (2) journeyman plumbers who are at least eighteen (18) years old, who have been residents of this state for more than one (1) year, and who have been at least five (5) out of the last eight (8) years immediately preceding their appointment, duly licensed master or journeyman plumbers;

(b) One (1) registered professional engineer, qualified in mechanical engineering;

(c) One (1) representative of the public who is not engaged in the business of installing or selling plumbing equipment;

(d) One (1) appointed representative of the department of health and environmental sciences, who shall be a sanitary engineer and who is secretary of the board.

(3) The appointed members of the board shall serve for a term of four (4) years.

History: En. 82A-1602.22 by Sec. 359, Ch. 350, L. 1974.

82A-1602.23. Board of real estate—appointment—qualifications—term.

(1) There is a board of real estate.

(2) The board consists of five members. The members are appointed by the governor. The members shall:

(a) Be residents of this state. At least two members shall be active and licensed real estate brokers or salesmen and have been actively engaged in the real estate business as a broker or salesman in this state for not less than 5 continuous years before appointment. One member shall be a representative of the public who is not a state government officer or employee and who is not engaged in business as a real estate broker or salesman.

(b) Be appointed so not more than three members, and not more than two board licensees are from the same congressional district. If a member takes up residence in a district different from the one in which he resided at the time of appointment, he vacates his membership on the board.

(c) Be appointed, in the event of a vacancy, by appointing a resident from the same district as the member whose office has been vacated.

(3) Not more than three members, including the chairman, shall be from the same political party.

(4) The members shall serve for a term of 4 years.

History: En. 82A-1602.23 by Sec. 360, Ch. 350, L. 1974; amd. Sec. 1, Ch. 378, L. 1977.

Amendments

The 1977 amendment substituted the second sentence of subsection (2) for a

82A-1602.24 REORGANIZATION OF EXECUTIVE DEPARTMENT

sentence reading "The members are the director of agriculture, who is the chairman of the board, and four (4) members appointed by the governor"; deleted references to the four appointed members throughout the section; inserted "or salesmen" in two places in the second sentence of subdivision (2)(a); added the last sentence of subdivision (2)(a); substituted the first sentence of subdivision (2)(b) for "Be appointed so that not more than two (2) are from the same congressional district, with no more than one (1) eligible real estate broker from the same congressional district"; and made minor changes in style.

Transition

Section 3, Ch. 378, Laws of 1977 read "The governor shall immediately after July 1, 1977, fill the vacancy created by the absence of the director of agriculture. Except for the director of agriculture, this act does not prevent those persons serving as members of the board of real estate on July 1, 1977, from completing their terms in office. The governor shall fill all vacancies occurring, by expiration of term or otherwise, in accordance with 82A-1602.23, as amended by this act."

82A-1602.24. (3217) Board of veterinarians—appointment—qualifications—term—removal. (1) There is a board of veterinarians.

(2) The board consists of six (6) members appointed by the governor, five (5) of whom shall be licensed veterinarians and one (1) of whom shall be a public member who is a consumer of veterinary services and who shall not be a licentiate of the board or of any other board under the department of professional and occupational licensing.

(3) The Montana State Veterinary Medical Association shall, at each annual meeting, nominate twice the number of veterinarian board members to be appointed that year. The names of these nominees shall be annually transmitted, under seal, to the governor before July 1. The governor shall, before August 1, appoint from this list the board members to fill the vacancies that will occur July 31. If no nominee has the required qualifications to be on the board, the governor may appoint any licensed and registered veterinarian.

(4) Each veterinarian member shall be a reputable licensed veterinarian who has graduated from a college authorized by law to confer degrees, and have educational standards equal to those approved by the American veterinary medical association. Each veterinarian member shall have actually and legally practiced veterinary medicine in either private practice or public service in this state for at least five (5) years immediately before his appointment.

(5) Each member shall serve for a term of five (5) years. The governor may, after notice and hearing, remove a member for misconduct, incapacity, or neglect of duty.

History: En. Sec. 1, Ch. 82, L. 1913; re-en. Sec. 3217, R. C. M. 1921; amd. Sec. 1, Ch. 90, L. 1955; Sec. 66-2201, R. C. M. 1947; amd. and redes. 82A-1602.24 by Sec. 204, Ch. 350, L. 1974; amd. Sec. 4, Ch. 135, L. 1975.

Amendments

The 1974 amendment renumbered and rewrote this section. For prior version, see section 66-2201 in the parent volume.

The 1975 amendment increased the board membership from five to six; added "five (5) of whom shall * * * and occupational licensing" to the end of subsection (2); redesignated the last four sentences of subsection (2) as subsection (3); redesignated former subsections (3) and (4) as subsections (4) and (5); and inserted "veterinarian" once in subsection (3) and twice in subsection (4).

82A-1602.26. Board of water well contractors—appointment—qualifications—term. (1) There is a board of water well contractors.

(2) The board consists of five (5) voting members. The members are:

(a) One (1) hydrogeologist appointed by the director of the Montana bureau of mines and geology;

(b) One (1) appointed by the director of natural resources and conservation;

(c) One (1) appointed by the director of health and environmental sciences;

(d) Two (2) licensed water well contractors appointed by the governor with the consent of the senate. These members shall have been residents of this state for a least three (3) years before appointment, and shall have had at last five (5) years' experience in the water well drilling business.

(3) The appointed members shall serve for a term of three (3) years. In case of a vacancy in the office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and laws of this state.

(4) The members of the board shall, upon entering on the duties of his office, take and subscribe to the oath specified in the constitution of the state of Montana, and such oath shall be filed in the office of the secretary of state of the state of Montana.

(5) The board shall have a seal with the words engraved thereon: "Water Well Contractor's Examining Board," and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(6) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. Each appointed member of the board who is not a government employee shall receive, as compensation for his services, the sum of twenty dollars (\$20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board.

History: En. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974.

Compiler's Notes

This section was enacted by Chapter 232 and Chapter 350, Laws of 1974. The enact-

ments do not contain identical language, but the differences are minor and since they do not appear to conflict, the compiler has printed the section as enacted by Chapter 350.

82A-1602.27. Board of psychologists — appointment — qualifications — term. (1) There is a board of psychologists.

(2) The board consists of three (3) members appointed by the governor. The governor shall appoint all members, including a member filling a vacancy for an unexpired term, from the list of licensed psychologists in this state. A member may not succeed himself, but may be reappointed after three (3) years following the termination of his previous appointment.

Each member shall be a citizen of the United States, and a resident of this state.

(3) Each member shall serve for a term of three (3) years.

History: En. Sec. 4, Ch. 73, L. 1971; Sec. 66-3204, R. C. M. 1947; amd. and redes. 82A-1602.27 by Sec. 314, Ch. 350, L. 1974.

Amendments

The 1974 amendment renumbered and rewrote this section. Prior to amendment, it read: "The state board of psychologist examiners is established to administer this act.

"(1) The board shall consist of three psychologists who shall be appointed by the governor within ninety (90) days after this act takes effect. The governor shall select his appointees for this first board from a list submitted to him by the Montana Psychological Association, consisting of the names of all members of the Montana Psychological Association who are currently certified by its board of examiners and who are also members of the American Psychological Association and who hold the Ph.D. degree.

"(2) The members of the first board shall serve the following terms: one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member

for three (3) years. Thereafter, at the expiration of the term of each member, the governor shall appoint his successor for a term of three (3) years from the list of licensed psychologists.

"(3) Before entering upon the duties of his office, each member of the board shall take the constitutional oath of office and file it with the secretary of state. Each member of the board first appointed under this act shall be issued a license upon payment of the appropriate fee.

"(4) No member of the board may be appointed to succeed himself, but any member may be reappointed after a period of three (3) years following the termination of a previous appointment.

"(5) Each member of the board shall be a citizen of the United States and a resident of Montana.

"(6) Any vacancy in the membership of the board occurring other than by expiration of term, shall be filled by appointment by the governor for the unexpired term, from a current list similar to the one submitted to him under subsection (2) hereof."

82A-1602.28. Board of radiologic technologists—composition—terms.

(1) There is a board of radiologic technologists.

(2) The board consists of seven (7) members appointed by the governor; two (2) members shall be radiologists licensed to practice medicine in Montana; one (1) member shall be a physician licensed to practice medicine in Montana; one (1) member shall be a chiropractor licensed to practice in Montana; and three (3) members shall be radiologic technologists registered with the American Registry of Radiologic Technologists (ARRT) who, with the exception of the first appointed members, are licensed radiologic technologists. Vacancies in unexpired terms shall be filled for the remainder of the term.

(3) Each member shall serve for a term of three (3) years with the following terms for the first appointed members:

- (a) one (1) radiologist for two (2) years
- (b) one (1) radiologist for three (3) years
- (c) one (1) physician for one (1) year
- (d) one (1) radiologic technologist for one (1) year
- (e) one (1) radiologic technologist for two (2) years
- (f) one (1) radiologic technologist for three (3) years
- (g) one (1) chiropractor for three (3) years.

History: En. 82A-1602.28 by Sec. 3, Ch. 336, L. 1975.

82A-1602.29. Board of warm air heating, ventilation, and air conditioning—appointment—qualifications—term. (1) There is a state board of warm air heating, ventilation, and air conditioning.

(2) The board consists of seven (7) members, appointed by the governor. The members are:

(a) two (2) master and two (2) journeyman mechanics, who shall be over the age of majority and residents of Montana for at least one (1) year. After the first board, each mechanic shall have been licensed pursuant to this act at least two (2) years immediately preceding his appointment;

(b) one (1) representative of the department of administration responsible for the administration of Title 69, chapter 21, who shall act as secretary;

(c) one (1) attorney from the department; and

(d) one (1) representative of the state fire marshal's office.

(3) Each member shall serve for a period of four (4) years, provided, however, that four (4) members of the first board shall serve as follows:

(a) one (1) master and one (1) journeyman for two (2) years; and

(b) one (1) master and one (1) journeyman for three (3) years.

(4) Each member of the board is entitled to twenty-five dollars (\$25) per day for each day served discharging his board duties, together with a per diem and mileage expense allowance pursuant to sections 59-801 and 59-538. No member of the board shall be allowed compensation in addition to his present compensation from the state.

(5) A majority of the members of the board constitute a quorum necessary for the transaction of business.

(6) The board shall meet at least semiannually.

History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975.

Title of Act

An act creating a board of warm air

heating, ventilation, and air conditioning; providing for the licensing of persons performing warm air heating, ventilating, or air conditioning work; and amending section 69-2111, R. C. M. 1947.

82A-1602.30. Board created. (1) There is a board of landscape architects. The board consists of five members of which at least three must be landscape architects. Members of the board shall be appointed by the governor and must be residents of this state. At least three shall have the qualifications of landscape architects required by this act and, except for the first appointed members, three members must be licensed landscape architects. The board is allocated to the department of professional and occupational licensing for administrative purposes only as prescribed in 82A-108.

(2) The terms of the members of the board first appointed are as follows:

(a) one member for 1 year;

(b) two members for 2 years; and

(c) two members for 3 years.

(3) Future terms are for 4 years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring

82A-1602.31 REORGANIZATION OF EXECUTIVE DEPARTMENT

prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than 8 consecutive years.

(4) The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this act.

(5) At its first meeting of every calendar year, the board shall elect from its members a president who may appoint a secretary. The secretary may or may not be a member of the board. In carrying out the provisions of this act, the only reimbursement members of the board may receive is for travel expenses allowed as in 59-538, 59-539, and 59-801, as amended, incurred in the performance of board duties.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977.

expenses allowed as in 59-538, 59-539, and 59-801, as amended" in the last sentence of subsection (5) for "travel and actual expenses"; and made minor changes in phraseology, punctuation and style.

Amendments

The 1977 amendment substituted "travel

82A-1602.31. Board of speech pathologists and audiologists—appointment—qualifications. (1) There is a board of speech pathologists and audiologists.

(2) The board consists of five (5) members, four (4) of whom shall:

(a) be appointed by the governor from names submitted to him by the association;

(b) have been residents of this state for at least one (1) year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of speech pathology or audiology for at least five (5) years immediately preceding their appointment.

(3) At least two (2) members of the board shall be speech pathologists and at least two (2) shall be audiologists, with the remaining member to be a public member who is a consumer of speech pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members shall at all times be validly licensed in speech pathology or audiology, except for the five (5) members first appointed, who shall also fulfill the licensure requirements of this act and in addition hold the ASHA certificate of clinical competence in speech pathology or audiology or its equivalent.

(4) Within thirty (30) days following the effective date of this act the association shall recommend at least three (3) and no more than five (5) persons for each of the five (5) board positions created by subsection (2) of this section. Not less than sixty (60) days before the end of the board's first full calendar year of existence and, thereafter, not less than sixty (60) days before the end of each calendar year, the association shall recommend at least three (3) and not more than five (5) persons for each vacancy occurring at the end of the calendar year. In the event of a vacancy for an unexpired term, the association shall expeditiously recommend at least two (2) and not more than three (3) persons to fill the va-

cancy and the governor shall appoint one of those persons to fill the unexpired term.

(5) The governor shall, within sixty (60) days after the effective date of this act, appoint one (1) board member for a term of one (1) year; two (2) for a term of two (2) years; and two (2) for a term of three (3) years. Appointments made thereafter shall be for three (3) year terms with no person eligible to serve more than two (2) full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed before commencing the terms defined in this section.

History: En. 82A-1602.31 by Sec. 5, Ch. 543, L. 1975.

82A-1603. Department—duties. In addition to the provisions of section 82A-108 of this act, the department shall:

(1) Provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing.

(2) Standardize and keep in Helena all official records of the boards.

(3) Make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board, or elsewhere in the state if requested by the board.

(4) Administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination.

(5) At the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department.

(6) Assess the costs of the department to the boards on a prorata basis according to the number of man days and the actual operating costs of the department for each board.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971.

82A-1604. Director—duties. In addition to his powers and duties under sections 82A-107 and 82A-108 of this act, the director shall:

(1) Appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) Whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in section 82A-1603(5) of this chapter, and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investiga-

tion. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) Hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) Approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977.

Effective Date

Section 15 of Ch. 533, Laws 1977 provided the act should be effective on its passage and approval. Approved April 29, 1977.

Amendments

The 1977 amendment added subdivision (4).

82A-1605. Boards within department—duties. Except for the inspection and code-making functions of the state electrical board transferred to the department of justice and enumerated in chapter 12 of this act, and subject to the administrative control of the department and the director of professional and occupational licensing as set forth in section 82A-108 of this act and under this chapter, each agency transferred to the department shall continue to exercise its prescribed statutory functions. In addition, each board within the department shall:

(1) Set and enforce standards, rules, and regulations governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction.

(2) Sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under section 82A-1604(1) of this chapter.

(3) Pay to the department its pro rata share of the assessed costs of the department under section 82A-1603(6).

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" near the beginning of the section.

82A-1606. Board within department—composition, etc. The members of boards within the department before the effective date of this chapter continue as members for the remainder of their terms. The composition, qualifications, method of appointment, terms of office, compensation, and reimbursement of the members of the boards within the department remain as prescribed by law, except:

(1) The executive officer of the Montana state department of health, or his designee, and the administrator of the Montana state department of public welfare, or his designee, are replaced by the director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his

designee, respectively, on the Montana state board of examiners for nursing home administrators, renamed the board of nursing home administrators in this chapter.

(2) The appointed representative of the state board of health is replaced by the appointed representative of the department of health and environmental sciences on the board of plumbing examiners, renamed the board of plumbers in this chapter.

(3) The director of the division of environmental sanitation or a qualified member of his staff appointed by the director is replaced by the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator on the board of certification for water and waste water operators, renamed the board of water and waste water operators in this chapter.

(4) The state engineer and the director of the division of environmental sanitation of the state board of health are replaced by the appointee of the director of the department of natural resources and conservation and the appointee of the director of the department of health and environmental sciences, respectively, on the water well contractors' examining board of the state of Montana, renamed the board of water-well contractors in this chapter.

History: En. 82A-1606 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 232, L. 1974.

Amendments

The 1974 amendment substituted "appointee of the director" twice in subdi-

vision (4), once for "administrator of the division of water resources" after "replaced by the" and once for "administrator of the division of environmental sciences" after "natural resources and conservation and the."

82A-1607. Electrical inspections and code making. The functions of the department of law enforcement and public safety of making inspections of electrical installations and issuing tags and charging fees therefor as set forth in 66-2805(c)(i) and of establishing an electrical code as set forth in 66-2802(1), which were transferred to the department in 82A-1203, are transferred to the department of administration.

History: En. 82A-1607 by Sec. 1, Ch. 87, L. 1973; amd. Sec. 10, Ch. 504, L. 1977.

Title of Act

An act transferring the functions of the department of law enforcement and public safety pertaining to electrical inspections and code making to the department of professional and occupational licensing, and providing an effective date.

Amendments

The 1977 amendment substituted "de-

partment of administration" at the end of the section for "department of professional and occupational licensing and the board of electricians, subject to the provisions of this act"; and made minor changes in style.

Effective Date

Section 2 of Ch. 87, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

CHAPTER 17—DEPARTMENT OF PUBLIC SERVICE REGULATION

Section

82A-1701. Department of public service regulation—creation—head.

82A-1702. Public service commission—continued—composition.

82A-1701 REORGANIZATION OF EXECUTIVE DEPARTMENT

82A-1704. Name changes.
82A-1705. Name changes.
82A-1706. Name changes.

82A-1701. Department of public service regulation—creation—head.
There is created a department of public service regulation. The department head is the public service commission provided for in section 82A-1702 of this chapter.

History: En. 82A-1701 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 5-71, dated Sept. 9, 1971, effective Sept. 9, 1971.

82A-1702. Public service commission—continued—composition. (1)
The public service commission, created in Title 70, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The composition, method of selection, and terms of office of members of the commission remain as prescribed in section 72-101, R. C. M. 1947. Members of the board of railroad commissioners ex officio public service commission before the effective date of this chapter continue as members of the public service commission for the remainder of their terms.

History: En. 82A-1702 by Sec. 1, Ch. 272, L. 1971.

Compiler's Notes

Section 72-101, referred to in subsection (2), was repealed by Sec. 3, Ch. 339, Laws of 1974.

82A-1703. Repealed.

Repeal

Section 82A-1703 (Sec. 1, Ch. 272, L. 1971), relating to the abolishment of the board of railroad commissioners and trans-

fer of its functions to the public service commission, was repealed by Sec. 24, Ch. 315, Laws of 1974.

82A-1704. Name changes. Wherever the words "board of railroad commissioners," "board," "Montana railroad commission," "board of railroad commissioners of the state of Montana," "board of railroad commissioners of Montana," "railroad commissioners," "railroad commission," and "railroad commission of the state of Montana" appear in sections 8-103, 8-103.1, 8-103.3, 8-111.1, 8-114, 8-127, 8-129, 8-131, 8-202, 8-203, 8-204, 8-205, 8-206, 8-207, 8-209, 8-210, 72-117, 72-121, 72-126, 72-127, 72-133, 72-134, 72-135, 72-142, 72-145, 72-146, 72-147, 72-150, 72-151, 72-152, 72-156, 72-158, 72-159, 72-160, 72-162, 72-163, 72-164, 72-165, 72-166, 72-167, 72-168, 72-662, 72-664, 72-704, 72-705, 72-706, 72-707, 72-708, 72-709, 72-711, R. C. M. 1947, the word "commission" is substituted therefor.

History: En. 82A-1704 by Sec. 20, Ch. 315, L. 1974.

82A-1705. Name changes. Wherever the words "Montana railroad and public service commission," "railroad commissioners," "board of railroad commissioners," "board of railroad commissioners of the state of Montana," and "railroad commission of this state," appear in sections 11-1019, 11-1021,

72-627, 72-703, 88-207, 89-605, R. C. M. 1947, the words "public service commission" are substituted therefor.

History: En. 82A-1705 by Sec. 21, Ch. 315, L. 1974.

82A-1706. Name changes. Wherever the words "railroad commissioners," "railroad and public service commissioners," and "railroad commissioner" appear in sections 23-3313, 23-3314, 23-3513, 25-501, 59-538, R. C. M. 1947, the words "public service commissioners" are substituted therefor.

History: En. 82A-1706 by Sec. 22, Ch. 315, L. 1974.

of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

Instructions to Publishers

Section 23 of Ch. 315, Laws 1974 read: "The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 20, 21, and 22 of this act, when reprinting sections or portions

Repealing Clause

Section 24 of Ch. 315, Laws 1974 read "Sections 8-115, 8-117, 8-120, 19-117, 19-118, 70-102, 70-118, 72-102, 72-104, 72-111, 72-141, 72-631 through 72-634, 82A-1703, R. C. M. 1947, are repealed."

CHAPTER 18—DEPARTMENT OF REVENUE

Section

- 82A-1801. Department of revenue—creation—head.
- 82A-1802. Additional functions transferred to department.
- 82A-1803. Advisory council for multi-state tax compact.
- 82A-1804. Director of revenue—creation.
- 82A-1806. Multistate tax compact advisory committee abolished.
- 82A-1807. Liquor control board abolished—functions transferred.
- 82A-1808. State tax appeal board—appeals concerning liquor and beer laws.

82A-1801. Department of revenue—creation—head. There is created a department of revenue. The department head is the director of revenue.

History: En. 82A-1801 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 62, Ch. 391, L. 1973.

section 15 of the Montana constitution" at the end of the section.

Amendments

The 1973 amendment substituted "director of revenue" for "state board of equalization provided for in article XII,

Executive Implementation

This chapter was implemented by Executive Reorganization Order 3-71, dated Aug. 4, 1971, effective Aug. 9, 1971.

82A-1802. Additional functions transferred to department. The functions of the secretary of state, which are contained in section 14-528, R. C. M. 1947 (pertaining to rural electric and telephone cooperatives license tax), are transferred to the department. Unless inconsistent with this act, any reference to the secretary of state in section 14-528, R. C. M. 1947, means the department of revenue.

History: En. 82A-1802 by Sec. 1, Ch. 272, L. 1971.

82A-1803. Advisory council for multi-state tax compact. The director of revenue shall appoint an advisory council for the purpose of complying with article VI, section 1(b) of the multi-state tax compact, section 84-6701, R. C. M. 1947. The council shall be appointed in accordance with the provisions of section 82A-110 of this act.

History: En. 82A-1803 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 63, Ch. 391, L. 1973.

section (1) which continued the functions of the board of equalization; and substituted "director of revenue" for "board" at the beginning of the section.

Amendments

The 1973 amendment deleted former sub-

82A-1804. Director of revenue—creation. (1) There is created the position of director of revenue.

(2) The director is the chief administrative officer of the department and in addition shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and legislative assembly at their request.

(3) The director of revenue shall be appointed and serve as provided for directors in section 82A-106 of this act.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973.

direction of the state board of equalization and he shall perform those functions that are delegated to him by the board" following "chief administrative officer of the department."

Amendments

The 1973 amendment deleted "under the

82A-1805. Repealed.

Repeal

Section 82A-1805 (Sec. 1, Ch. 272, L. 1971), relating to the Montana liquor con-

trol board, was repealed by Sec. 3, Ch. 207, Laws 1973.

82A-1806. Multistate tax compact advisory committee abolished. The multistate tax compact advisory committee, provided for in section 84-6704, R. C. M. 1947, is abolished.

History: En. 82A-1806 by Sec. 1, Ch. 272, L. 1971.

82A-1807. Liquor control board abolished—functions transferred. The Montana liquor control board, created in Title 4, chapter 1, is abolished, and its functions are transferred to the department of revenue. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the Montana liquor control board means the department of revenue.

History: En. 82A-1807 by Sec. 1, Ch. 207, L. 1973.

board and transferring its functions to the department of revenue and board of equalization; repealing section 82A-1805, R. C. M. 1947; and providing an effective date.

Title of Act

An act abolishing the liquor control

82A-1808. State tax appeal board—appeals concerning liquor and beer laws. Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension or revocation of beer or liquor licenses to the state tax appeal board. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act [82-4201 to 82-4225] and the decision of the

state tax appeal board shall be final unless reversed or modified upon judicial review.

History: En. 82A-1808 by Sec. 2, Ch. 207, L. 1973; en. 82A-1808 by Sec. 64.1, Ch. 391, L. 1973.

Compiler's Notes

Chapter 207 and Chapter 391, Laws of 1973, both enacted sections numbered 82A-1808. The language of the two enactments is identical except that Ch. 391, the later enactment, substituted "state tax appeals board" for "state board of equalization." The language of Ch. 391 is used above.

Title of Act

An act to amend sections 4-354, 7-122, 15-2285, 15-22-112, 16-910, 16-2010, 16-3706, 16-3912, 16-3916, 25-605, 25-609, 32-2607, 32-3804, 50-1032, 50-1220, 51-303, 53-703, 53-1013, 53-1025, 59-1109, 59-1110, 66-223, 66-227, 67-2211, 67-2212, 67-2213, 67-2214, 67-2215, 67-2216, 67-2217, 67-2218, 67-2219, 67-2220, 67-2221, 67-2222, 67-2223, 67-2224, 67-2225, 67-2226, 67-2317, 67-2318, 67-2340, 67-2342, 69-3502, 69-3504, 69-3504.1, 69-3923, 69-6007, 71-236, 75-6410.1, 75-6711, 81-928, 81-930, 81-1115, 81-1116, 81-1117, 81-1118, 82-1501, 82-1506, 82-1512, 82-1925.1, 82A-1801, 82A-1803, 82A-1804, 82A-1808, 89-1812, 89-2401, 91-502, 91-504, 91-505, 91-506, 91-507, 91-508, 91-509, 91-523, 91-4321, 91-4414.1, 91-4415, 91-4418, 91-4419, 91-4421, 91-4423, 91-4425, 91-4426, 91-4427, 91-4428,

91-4429, 91-4430, 91-4431, 91-4437, 91-4438, 91-4439, 91-4440, 91-4442, 91-4443, 91-4444, 91-4445, 91-4446, 91-4447, 91-4448, 91-4449, 91-4450, 91-4451, 91-4454, 91-4455, 91-4459, 91-4460, 91-4461, 91-4462, 91-4463, 91-4464, 94-1506, and 94-35-260, R. C. M. 1947, to provide for a general revision of the tax laws of Montana to implement article VIII, sections 3 and 7 of the 1972 Montana constitution by designating the state department of revenue as the tax administration agency for the state of Montana, by replacing the state board of equalization with a state tax appeal board, or liquor control board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal sections 16-1016, 16-3703, and 91-4466, R. C. M. 1947.

Repealing Clause

Section 3 of Ch. 207, Laws 1973 read "Section 82A-1805, R. C. M. 1947, is repealed."

Effective Date

Section 4 of Ch. 207, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

CHAPTER 19—DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Section

82A-1901. Department of social and rehabilitation services—creation—head.

82A-1901.1. Functions of department.

82A-1905. Board of veterans' affairs—composition—qualifications—term—allocated.

82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation.

82A-1901. Department of social and rehabilitation services—creation—head. There is created a department of social and rehabilitation services. The department head is a director of social and rehabilitation services appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-1901 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 6-71, dated Oct. 28, 1971, effective Nov. 1, 1971.

82A-1901.1. Functions of department. The department and its units are responsible for administering laws pertaining to public assistance, including, but not limited to:

- (1) Dependent and neglected children (Title 10, chapter [13]);

- (2) Child adoption agencies (Title 10, chapter 7) ;
- (3) Day care facilities for children (Title 10, chapter 8) ;
- (4) Adoptions (Title 61, chapter 2) ;
- (5) County poor (Title 71, chapter 1) ;
- (6) Department's functions and county departments of public welfare (Title 71, chapter 2) ;
- (7) General relief (Title 71, chapter 3) ;
- (8) Old-age assistance (Title 71, chapter 4) ;
- (9) Aid to dependent children (Title 71, chapter 5) ;
- (10) Aid to blind (Title 71, chapter 6) [Repealed] ;
- (11) Child welfare (Title 71, chapter 7) ;
- (12) Disabled persons (Title 71, chapter 12) [Repealed] ;
- (13) Services to the blind (Title 71, chapter 14) ;
- (14) Medical assistance (Title 71, chapter 15) ;
- (15) Vocational rehabilitation and education (Title 71, chapter [21]) ;
- (16) Veterans' welfare (Title 71, chapter [22]) ;
- (17) Problems of aging (Title 71, chapter [23]) .

History: En. 82A-1901.1 by Sec. 45, Ch. 121, L. 1974.

Compiler's Notes

Sections 10-501 to 10-519, pertaining to dependent and neglected children, were repealed by Sec. 13, Ch. 328, Laws of 1974; section 10-505 also was repealed by Sec. 52, Ch. 121, Laws of 1974. Sections 10-520 to 10-525, pertaining to foster or boarding homes, were transferred to sections 10-1316 to 10-1321 by Sec. 14, Ch.

328, Laws of 1974. Sections 71-401 to 71-411 and 71-413, pertaining to old-age assistance, were repealed by Sec. 1, Ch. 210, Laws of 1974. Sections 71-601 to 71-607 and 71-609 to 71-614, relating to aid to the blind, were repealed by Sec. 1, Ch. 210, Laws of 1974; section 71-603 also was repealed by Sec. 52, Ch. 121, Laws of 1974. Sections 71-1201 to 71-1210, relating to aid to the permanently and totally disabled, were repealed by Sec. 1, Ch. 210, Laws of 1974.

82A-1902 to 82A-1904. Repealed.

Repeal

Sections 82A-1902 to 82A-1904 (Sec. 1, Ch. 272, L. 1971), relating to abolishment of the state department of public welfare

and transfer of functions to the board of social and rehabilitation appeals, were repealed by Sec. 52, Ch. 121, Laws of 1974.

82A-1905. Board of veterans' affairs—composition—qualifications—term—allocated. (1) There is a board of veterans' affairs.

(2) The board consists of five (5) members appointed by the governor. Not more than one (1) member shall be appointed from a single county. However, a change of residence within the state after appointment does not alter a member's status. All members shall be residents of this state, and shall have been honorably discharged from service in the military forces of the United States in any of its wars. A vacancy occurring on the board shall be filled by the governor, subject to the conditions of this subsection.

(3) Each member shall serve for a term of five (5) years.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

History: En. 82A-1905 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 46, Ch. 121, L. 1974.

Amendments

The 1974 amendment rewrote this section, which provided for continuation of the veterans' welfare commission under the name of board of veterans' affairs; transferred the board to the department of social and rehabilitation services for administrative purposes; provided that present members should serve the remainder of their terms; provided that composition, method of appointment, terms of office, and qualifications of members remain as prescribed under section 77-1001; and provided that members should be compensated and reimbursed as are members of advisory councils under section 82A-110.

Repealing Clause

Section 52 of Ch. 121, Laws 1974 read "Sections 10-505, 41-802, 41-804, 41-807, 41-809, 41-811, 41-814, 41-815, 71-201 through 71-206, 71-208, 71-209, 71-220, 71-224, 71-225, 71-232, 71-310, 71-603, 71-707, 71-801, 71-902 through 71-904, 71-1101 through 71-1107, 71-1402, 71-1403, 71-1410 through 71-1415, 71-1513, 71-1523, 77-1001, 77-1008, 77-1011, 82-3501 through 82-3503, 82A-1902 through 82A-1904, 82A-1907, and 82A-1908, R. C. M. 1947, are repealed."

Instructions to Publishers

Section 47 of Ch. 121, Laws of 1974 read "Wherever the words 'state bureau of child and animal protection,' 'division of child welfare services of the state department of public welfare,' 'division of child welfare service,' 'bureau of child protection,' 'division of child welfare services of the state department of public welfare,' or 'state department of public welfare' appear in sections 10-503, 10-504, 10-519, 10-521, 10-522, and 71-1511, R. C. M. 1947, the words 'state depart-

ment of social and rehabilitation services' are substituted therefor."

Section 48 of Ch. 121, Laws of 1974 read "Wherever the words 'state department of public welfare,' 'department of public welfare,' or 'state department of welfare' appear in sections 10-507, 10-524, 61-205, 61-208, 61-209, 61-211, 71-1511, 93-2601-57, and 93-2601-78, R. C. M. 1947, the words 'state department of social and rehabilitation services' are substituted therefor."

Section 49 of Ch. 121, Laws of 1974 read "Wherever the words 'state department of public welfare,' 'department of public welfare,' 'state public welfare department,' 'state board of public welfare,' 'board of public welfare,' 'board,' 'state board,' 'state welfare board,' 'state administrator,' 'administrator,' or 'supervisor' appear in sections 10-703, 10-704, 10-705, 10-802, 10-808, 10-809, 71-207, 71-230, 71-234, 71-236, 71-237, 71-239, 71-240, 71-247, 71-250, 71-404, 71-412, 71-509, 71-606, 71-706, 71-901, 71-1202, 71-1205, 71-1406, 71-1408, 71-1409, and 71-1515, R. C. M. 1947, the words 'state department' are substituted therefor."

Section 50 of Ch. 121, Laws of 1974 read "Wherever the words 'state board,' 'state department of public welfare,' 'state board of public welfare,' or 'state administrator,' appear in sections 71-216, 71-217, 71-227, 71-233, 71-242, 71-311, 71-401, 71-503, 71-602, and 71-1201, R. C. M. 1947, the words 'state department' are substituted therefor."

Section 51 of Ch. 121, Laws of 1974 read "The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 47, 48, 49, and 50 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes."

82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation. (1) There is created a board of social and rehabilitation appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board consists of three (3) members, appointed by the governor as prescribed in section 82A-112 of this act, as follows:

(a) The director of the department, who shall act as chairman of the board. The director does not have a term on the board as a board member, but shall serve at the pleasure of the governor.

(b) Two members of the general public.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act. For purposes of that section, a majority shall be considered as one (1).

History: En. 82A-1906 by Sec. 1, Ch. 272, L. 1971.

82A-1907, 82A-1908. Repealed.

Repeal

Sections 82A-1907 and 82A-1908 (Sec. 1, Ch. 272, L. 1971), relating to transfer of functions of the state department of

welfare to the board of social and rehabilitation appeals, and abolishment of additional state agencies, were repealed by Sec. 52, Ch. 121, Laws of 1974.

CHAPTER 20—DEPARTMENT OF FISH AND GAME

Section

82A-2001. Department of fish and game—creation—head.

82A-2001.1. Functions of department.

82A-2004. Fish and game commission—composition—qualifications—designation.

82A-2005. Montana outfitters' council—composition—qualifications—terms—allocation—passenger tramway safety.

82A-2001. Department of fish and game—creation—head. There is created a department of fish and game. The department head is the director of fish and game appointed by the governor in accordance with 82A-106. The director is the secretary of the commission.

History: En. 82A-2001 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 417, L. 1977.

Amendments

The 1977 amendment substituted "director of fish and game appointed by the governor in accordance with 82A-106" at the end of the second sentence for "state fish and game commission provided for

in section 82A-2004 of this chapter, but section 82A-107 of this act does not apply to the commission as a department head"; and added the last sentence.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 1-72, dated June 30, 1972, effective July 1, 1972.

82A-2001.1. Functions of department. The department and its units are responsible for administering laws pertaining to fish and game, including, but not limited to:

- (1) Fish, game, and outfitters (Title 26);
- (2) State parks (Title 62, chapter 3);
- (3) Outdoor recreational resources (Title 62, chapter 4);
- (4) Motorboat and vessel regulations (Title 69, chapter 35).

History: En. 82A-2001.1 by Sec. 54, Ch. 511, L. 1973.

82A-2002. Repealed.

Repeal

Section 82A-2002 (Sec. 1, Ch. 272, L. 1971), relating to functions of the depart-

ment, was repealed by Sec. 58, Ch. 511, Laws 1973.

82A-2003. Repealed.

Repeal

Section 82A-2003 (Sec. 1, Ch. 272, L. 1971; Sec. 55, Ch. 511, L. 1973), relating

to the director of fish and game department, was repealed by Sec. 15, Ch. 417, Laws 1977.

82A-2004. Fish and game commission—composition—qualifications—designation. (1) There is a fish and game commission.

(2) The commission consists of five members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweetgrass counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the welfare of the fish, game, and wildlife of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals.

(4) A vacancy occurring on the commission shall be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish and game commission is designated as a quasi-judicial board for purposes of 82A-112.

History: En. 82A-2004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 56, Ch. 511, L. 1973; amd. Sec. 2, Ch. 417, L. 1977.

Amendments

The 1973 amendment substituted the present subsection (1) for a subsection continuing the state fish and game commission created in Title 26, chapter 1, except for the function of appointing and

removing the state fish and game director; inserted new subsections (2) through (4); and renumbered former subsection (2) as (5).

The 1977 amendment deleted "state" before "fish and game commission" in subsections (1) and (5); deleted "with the consent of the senate" after "filled by the governor" in subsection (4); and made minor changes in phraseology and style.

82A-2005. Montana outfitters' council — composition — qualifications — terms—allocation—passenger tramway safety. (1) There is a Montana outfitters' council.

(2) The council consists of seven (7) members. Each member shall be a licensed outfitter and shall represent one (1) of the seven (7) fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the district headquarters at 1:00 p.m. on the second Friday of March. A majority vote of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an

alternate member shall also be elected to serve if the first elected member is unable to act.

(3) The members shall serve staggered three (3) year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of section 82A-110.

History: En. 82A-2005 by Sec. 57, Ch. 511, L. 1973; amd. Sec. 1, Ch. 63, L. 1974. 69-6611, 69-6612, 69-6613, 69-6614, the word 'department' is substituted therefor."

Amendments

The 1974 amendment deleted subdivision (a) from the end of the section, which read "Wherever the words 'Montana aerial tramway safety board,' 'passenger tramway safety board,' or 'board' appear in sections 69-6601, 69-6605, 69-6606, 69-6607, 69-6608, 69-6609, 69-6610,

Repealing Clause

Section 58 of Ch. 511, Law 1973 read "Sections 26-101, 26-102, 26-104.2, 26-105, 26-105.1, 26-106.1, 26-106.2, 26-116, 26-120, 26-209, 26-224, 26-905, 26-910, 62-309, 62-404, 69-6603, 69-6604, 82A-217, 82A-2002, R. C. M. 1947, are repealed."

CHAPTER 21—MISCELLANEOUS TRANSFERS

Section

82A-2102. Board of state canvassers transferred to secretary of state.

82A-2101. Repealed.

Repeal

Section 82A-2101 (Sec. 1, Ch. 272, L. 1971), relating to the federal-state co-

ordinator's office being transferred to governor's office, was repealed by Sec. 1, Ch. 114, Laws 1977, effective March 25, 1977.

82A-2102. Board of state canvassers transferred to secretary of state.
The board of state canvassers, created in section 23-4016, R. C. M. 1947, is transferred to the office of the secretary of state.

History: En. 82A-2102 by Sec. 1, Ch. 272, L. 1971.

Repealing Clause

Section 2 of Ch. 272, Laws 1971 read "Section 27-427, R. C. M. 1947, is repealed."

82A-2103. Repealed.

Repeal

Section 82A-2103 (Sec. 1, Ch. 272, L. 1971), relating to the state board of hail

insurance, was repealed by Sec. 2, Ch. 395, Laws 1973. For present law, see sec. 82A-304.1.

TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

Chapter

1. Sovereignty and territorial jurisdiction of the state, 83-108, 83-109, 83-114, 83-115.
3. Persons composing the people of the state—residence, rules for determining, 83-303.
6. Contract actions against state, 83-606.
9. Assignment of claims against state, 83-901 to 83-904.

CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

Section

- 83-108. Jurisdiction over lands purchased by United States.
- 83-109. Concurrent jurisdiction over Fort Peck dam ceded to United States—reservation of rights to state.
- 83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center.
- 83-115. Acceptance of concurrent jurisdiction over Big Hole national battlefield.

83-102. (20) Territorial jurisdiction, limitations on.

Execution of State Arrest Warrant on Indian Reservation

Where Indian was allegedly involved in a homicide committed outside the reservation and a state warrant issued for his arrest, the county sheriff could lawfully execute the warrant within the confines of the Crow Indian Reservation, because the Crow Tribe had provided no procedure for the extradition of persons wanted by state authorities, no federal statutes or regulations vested the tribal judge with a power to extradite, and execution of the state warrant would not constitute a serious infringement on the tribe's right of self-government. State ex rel. Old Elk v. District Court, — M —, 552 P 2d 1394.

Jurisdiction Over Indian Divorce

State has jurisdiction over divorce ac-

tion brought by an Indian plaintiff against an Indian defendant, both residing on reservation, since the power to grant a divorce has not been pre-empted by the federal government and does not interfere with reservation self-government. State ex rel. Iron Bear v. District Court, Fifteenth Judicial Dist., Roosevelt County, — M —, 512 P 2d 1292.

State court had jurisdiction over petition for divorce filed by one Indian against another where Indian tribal court had not attempted to exercise jurisdiction over marriage and divorce; the courts of this state are open to all Indian citizens and they are entitled to the protection of the state laws and utilization of state courts. Bad Horse v. Bad Horse, — M —, 517 P 2d 893.

83-104. (22) Glacier National Park.

Federal Jurisdiction

Although the agreement of September 26, 1895 allowed Indians to cut wood for certain enumerated purposes, the defendant, a Blackfoot Indian who cut wood in

Glacier National Park for the express purpose of testing the Indian rights, had no defense based upon the purposes in the agreement. United States v. Momberg, 378 F Supp 1152.

83-105. Repealed.

Repeal

Section 83-105 (Sec. 1, Ch. 1, L. 1939), relating to the conveyance of mineral

rights in Glacier National Park, was repealed by Sec. 116, Ch. 428, Laws 1973.

83-108. (25) Jurisdiction over lands purchased by United States. Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within

the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of health and environmental sciences, and the enforcement of any regulations promulgated by said departments in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States courthouse, post office and for other purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of United States courthouse, post offices and for other like purposes," approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R. C. M. 1921; amd. Sec. 1, Ch. 155, L. 1939; amd. Sec. 102, Ch. 349, L. 1974.	the department of health and environmental sciences near the middle of this section for references to the livestock sanitary board and the state board of health.
--	---

Amendments	References
The 1974 amendment substituted references to the department of livestock and	State ex rel. Parker v. District Court, 147 M 151, 410 P 2d 459.

83-109. (25.1) Concurrent jurisdiction over Fort Peck dam ceded to United States—reservation of rights to state. That consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction shall be, and the same is hereby, ceded to the United States over the Fort Peck dam, the body of water or artificial lake created by such dam, the land under such body of water, and any lands now owned or which may be hereafter acquired by the United States and which shall touch such body of water, all such being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum and Fergus, state of Montana, saving, however, to the said state the right to serve civil or criminal process within the limits of the territory over which jurisdiction is so ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in said state, within or without said territory, and saving further to the said state the right to tax persons and corporations, their franchises and property within said territory, and reserving further to the said state and its inhabitants, citizens, and nonresidents the right to fish or hunt by boat or otherwise, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state jurisdiction in the enforcement of the state laws relating to the duties of the department of livestock, and the department of health and environmental sciences, and the enforcement of regulations promulgated by said departments in accordance with the laws of said state; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of the state of Montana that they assume police or military jurisdiction over said territory.

History: En. Sec. 1, Ch. 50, Ex. L. 1933; amd. Sec. 103, Ch. 349, L. 1974.

Amendments

The 1974 amendment substituted refer-

ences to the department of livestock and the department of health and environmental sciences near the end of this section for references to the livestock sanitary board and the state board of health.

83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana as ceded by Public Law 91-45; 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

History: En. Sec. 1, Ch. 157, L. 1971.

Title of Act

An act accepting the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana; and providing an effective date.

Effective Date

Section 2 of Ch. 157, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

83-115. Acceptance of concurrent jurisdiction over Big Hole national battlefield. The state of Montana accepts the retrocession in public Law 88-24, which was approved May 17, 1963 and made effective upon acceptance

of the retrocession by the state of Montana, of such jurisdiction as had been ceded by this state to the United States over the lands within the boundaries of the Big Hole national battlefield. This state recognizes the reservation in the United States of concurrent legislative jurisdiction over such lands.

History: En. 83-115 by Sec. 1, Ch. 125, L. 1977.

the United States over the lands within the boundaries of the Big Hole national battlefield; recognizing reservation in the United States of concurrent legislative jurisdiction.

Title of Act

An act accepting the retrocession of such jurisdiction as had been ceded to

CHAPTER 3—PERSONS COMPOSING THE PEOPLE OF THE STATE— RESIDENCE, RULES FOR DETERMINING

Section

83-303. Residence, rules for determining.

83-303. (33) Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1 to 3. * * * [Same as parent volume.]

4. The residence of his parents, or if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody, or if neither parent has legal custody the parent with whom he customarily resides, is the residence of the unmarried minor child. In case of a controversy the district court may declare which parental residence is the residence of an unmarried minor child.

5. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

6. The residence can be changed only by the union of act and intent.

History: En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rev. C. 1907; re-en. Sec. 33, R. C. M. 1921; amd. Sec. 4, Ch. 164, L. 1975. Cal. Pol. C. Sec. 52.

unmarried minor children"; deleted subdivision 5 which read "The residence of the husband is presumptively the residence of the wife"; and redesignated former subdivisions 6 and 7 as subdivisions 5 and 6.

Amendments

The 1975 amendment rewrote subdivision 4, which read "The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the

Repealing Clause

Section 5 of Ch. 164, Laws 1975 read "Section 36-102, R. C. M. 1947, is repealed."

CHAPTER 6—CONTRACT ACTIONS AGAINST STATE

Section

83-606. Attorney general—service of process upon—power to arbitrate, compromise and settle.

83-606. Attorney general—service of process upon—power to arbitrate, compromise and settle. The attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served, and he shall have full charge of such litigation on behalf of the state of Mon-

tana. He is authorized to arbitrate, compromise or settle any claim cognizable under this act, after the institution of any suit thereon, and further, with the approval of the court in which said suit is pending.

History: En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977.

Amendments

The 1977 amendment deleted "and by

and with the consent of the board of examiners of the state of Montana" from the end of the first sentence; and made a minor change in punctuation.

CHAPTER 7—TORT ACTIONS AGAINST STATE

83-701 to 83-705. Repealed.

Repeal

Sections 83-701 to 83-705 (Secs. 1 to 5, Ch. 254, L. 1959; Sec. 1, Ch. 93, L. 1973; Sec. 16, Ch. 343, L. 1977), relating to

jurisdiction, practice and procedure, and appeal of tort claims against the state, were repealed by Sec. 12, Ch. 360, Laws 1977.

83-706. Repealed.

Repeal

Section 83-706 (Sec. 6, Ch. 254, L. 1959), creating state immunity from liability in

excess of insurance coverage, was repealed by Sec. 3, Ch. 93, Laws 1973; Sec. 12, Ch. 360, Laws 1977.

83-706.1. Repealed.

Repeal

Section 83-706.1 (Sec. 2, Ch. 93, L. 1973), relating to governmental immunity,

was repealed by Sec. 12, Ch. 360, Laws 1977.

83-707. Repealed.

Repeal

Section 83-707 (Sec. 7, Ch. 254, L. 1959), relating to tort claims not to affect work-

men's compensation claims, was repealed by Sec. 12, Ch. 360, Laws 1977.

CHAPTER 8—JURISDICTION OF INDIAN COUNTRY

83-801. Criminal jurisdiction, etc.

Effect of Chapter

This section constitutes valid and binding consent of people of Montana pursuant to federal statute to assume jurisdiction over crimes committed by or against Indians on Indian territory. State ex rel. McDonald v. District Court, 159 M 156, 496 P 2d 78.

eral jurisdiction through repeal of same statute state legislative action was sufficient to establish jurisdiction. State ex rel. McDonald v. District Court, 159 M 156, 496 P 2d 78.

Scope of Chapter

Legislative Action Sufficient to Establish Jurisdiction

Federal statute providing for state jurisdiction over offenses committed by or against Indians on Indian reservations did not require constitutional amendment for valid and binding consent of people of Montana to assume jurisdiction; where Congress retained power to reassume fed-

The Northern Cheyenne reservation was not within the scope of this chapter, and in the absence of action by the state and the tribe in strict compliance with congressional requirements for transfer of jurisdiction, the tribal council could not waive to the district court jurisdiction of juvenile delinquency on the reservation. Blackwolf v. District Court, 158 M 523, 493 P 2d 1293, distinguished in — M —, 512 P 2d 1292.

Tribal Council Action

Failure of state legislature to take affirmative legislative action concerning either civil or criminal jurisdiction over Indians on Blackfeet reservation as permitted under 28 U. S. C. § 1360 was not remedied by unilateral tribal council ac-

tion, which provided that tribal and state courts have concurrent jurisdiction in all civil suits against members of Blackfeet tribe. *Kennerly v. District Court of the Ninth Judicial District of Montana*, 400 US 423, 27 L Ed 2d 507, 91 S Ct 480, distinguished in — M —, 512 P 2d 1292.

83-806. Withdrawal of consent to state jurisdiction.**Withdrawal of Consent**

Tribal resolution attempting to withdraw consent to state jurisdiction over criminal offenses committed on Indian reservation was ineffective where it was enacted more than two years after state assumed jurisdiction; governor had no power to extend time limit for withdrawal of tribal consent. *State ex rel. McDonald v. District Court*, 159 M 156, 496 P 2d 78.

Tribal resolution attempting to withdraw consent to state jurisdiction over criminal offenses committed on Indian reservation did not constitute a valid withdrawal of such consent where resolution was never transmitted to governor and no gubernatorial proclamation was ever issued concerning the tribal resolution. *State ex rel. McDonald v. District Court*, 159 M 156, 498 P 2d 78.

CHAPTER 9—ASSIGNMENT OF CLAIMS AGAINST STATE**Section**

83-901. Notice to state auditor.

83-902. Limitations on assignment.

83-903. Power of state auditor to promulgate rules.

83-904. Effect of assignment.

83-901. Notice to state auditor. All transfers and assignments made of any claim against the state of Montana, or any part thereof, or interest thereon, except as hereinafter provided, shall be absolutely null and void and unenforceable against the state of Montana unless the assignee thereof files written notice of the assignment on such forms as may be required by the state auditor, together with a true copy of the instrument of assignment.

History: En. Sec. 1, Ch. 44, L. 1967.

Title of Act

An act to require assignees of moneys due from the state of Montana to file written notice of assignment and a copy of the assignment instrument with the

state auditor; restricting multiple assignments; authorizing promulgation of rules and regulations for such assignments by the state auditor; and allowing deductions to be made from salaries of employees of the state for specified purposes.

83-902. Limitations on assignment. Unless otherwise expressly permitted by the state auditor, no more than one assignment of a claim shall be effective at one time, and no assignment shall be made to more than one party, except that an assignment may be made to one party as agent or trustee for two (2) or more parties. An assignment shall not be subject to further assignment.

History: En. Sec. 2, Ch. 44, L. 1967.

83-903. Power of state auditor to promulgate rules. The state auditor may promulgate rules and regulations regarding the form of assignment,

the procedures for filing assignments, and the submission of claims covering assigned funds.

History: En. Sec. 3, Ch. 44, L. 1967.

83-904. Effect of assignment. Nothing contained herein shall in any way impair the negotiability of state warrants, nor preclude employees of the state of Montana from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

History: En. Sec. 4, Ch. 44, L. 1967.

State Law Library of Montana



3 0000 00246277 2

DOES NOT
CIRCULATE

